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Analysis of the Non-Profit Sector in the EU15 for Monitoring and Control

Tanja Horvath and Anjula Garg

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The information contained in this report has not been confirmed as accurate or complete by competent legal experts in the aforementioned Member States and it should not, under any conditions, be considered as such.

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Abstract

The report "Analysis of the EU15 Non-profit Sector for Monitoring and Control" was written in the context of the European Commission forum "Support against Terrorist Financing" by Directorate General Justice, Liberty and Security (JLS), and of a Joint Research Centre (JRC) research project to support monitoring and control for EU aid funds. The report's purpose is to give an overview of the non-profit sector in EU15 with specific attention to the prevention of fraudulent use of funds in this sector, in general, and terrorist financing in particular. This report is complemented by the report "Analysis of the EU10 Non-profit Sector for Monitoring and Control" which concentrates on the non profit sector in the ten new countries.

Though the "fight against terrorist financing" acquired added political significance in recent times and has monopolised attention, the more general problem of the misuse of funds by the non-profit sector has existed for quite some time - well before the recent terrorist attacks – and needs to be considered as a problem in its own right.

It is a fact that the recent terrorist events helped to bring the non-profit sector into the spotlight demanding stronger action to increase transparency and accountability in this area.

After a short presentation of the project, the report briefly introduces the problem in the international context and gives an overview of various attempts to tackle it by international organisations. A summary of existing terms and their definitions serves the purpose of helping to characterise the sector more usefully. There follows an analysis of EU15 regulations governing the non-profit sector, by looking specifically into the following dimensions: registration, accreditation, and monitoring requirements, taxation and the special case of the gambling sector. The report ends with a set of recommendations for further action.

Executive Summary

The work on "Analysis of the EU15 Non-Profit Sector for Monitoring and Control" is motivated by two main reasons. On the one hand it aims to support EU regulatory work for the non-profit sector. On the other, it is intended to support transparency and traceability for aid funds. This work is complemented by the report "Analysis of the EU10 Non-profit Sector for Monitoring and Control" which concentrates on the non profit sector in the ten new countries.

This current report can be seen as supporting directly EU regulatory work for the charitable/non-profit sector through a comparative analysis of information with a view to standardising terminology, as well as comparing requirements for registration, accreditation, and monitoring. The report also includes information on the size of the non-profit sector and tax status of these organisations, including the gambling sector.

However, the report contributes also to the second goal, namely, supporting transparency and traceability for aid funds. This second goal is addressed more directly by an on-going JRC research project to build automated IT-based tools to support monitoring and control tasks for activities financed through aid funds. The project's name is TR-AID and stands for "Transparent Aid – A System to Support Monitoring of Aid Funds". It started in 2004 inside the Unit "Support to External Security" of the Institute for the Protection and Security of the Citizen, in JRC-Ispra. The main objective of TR-AID is to contribute towards the effective use of aid funds by helping to avoid the misuse of such funds. The data collection effort that it entails is meant to complement official aid activity databases. Sources of information will include European Commission databases, OECD databases, open sources (e.g. web sites of both non-profit and donor organisations) and third-party databases, such as company directories. This report looks also into the opportunities and feasibility of the creation of repositories of basic information on charitable organisations, and it is principally in this respect that it links to the IT-based developments of project TR-AID. As for the IT development, the principal beneficiary of this work is seen to be the donor community, though developments have solicited the interest of the antifraud and law-enforcement community as well.

Both efforts outlined above either aim at or would benefit from the creation of a register/repository for information on non-profit organisations, to improve transparency for the sector and to support the implementation of the Financial Action Task Force (FATF[1]) Special Recommendation VIII for Non-Profit Organisations. In fact, it was only after a presentation at the European Forum for the Prevention of Organised Crime (the "Round Table Meeting of 29 October 2004 on the misuse of the charitable and non-profit sector for Terrorist Financing – A possible EU approach") that it was understood that the methodology to prevent the misuse of funds was applicable also to the fight against terrorism. The JRC proposal for what concerns minimum registering requirements for non-profit organisations as well as the recommendations for these entities to be accredited and monitored would lead naturally to the reduction of their misuse by terrorist organisations. It is in this context that the report first discusses various attempts by major international organisations as well as important private organisations in addressing this problem. As a second step the available information on the non-profit sector in the EU 15 Member States is collected, analysed and compared. It should be noted that neither the collected information nor the analysis can claim to be fully exhaustive. This is due primarily to linguistic difficulties, especially for the cases where national legislation was often only available in the national language. It is also due to the inherent complexity of the non-profit sector and the short time frame for this work.

[1] http://www.fatf-gafi.org/pages/0,2966,en_32250379_32235720_1_1_1_1_1,00.html

Chapter 1.
Misuse of Aid Funds and Terrorist Financing via the Charitable / Non-Profit Sector

The misuse of aid funds in the charitable/non-profit sector in general, and for terrorist financing in particular is subject to different regulations in the international law and has been widely recognised in the international context. There are various approaches to address and resolve the problem.

This problem as well as the possible solutions has to be dealt within the international law. Its international relevance can be summarised as follows:

The misuse of funds as a negative impact of non-profit organisations exists in almost all countries with a visible non-profit sector. Especially in the context of aid funds, a cross-border relationship between donors, fund distributing organisations and the beneficiaries are widespread. Therefore the approach to the problem can only be handled on international level.

For this reason the following section is meant to give an overview of the various attempts in addressing and resolving the problem and to show the international legal framework for approaches to possible solutions.

1. Recognition of the Problem in the International Context

The misuse of funds distributed by charitable/non-profit organisations in general and the distribution for terrorist financing in particular as internationally recognised vulnerabilities of this sector are subject to various regulations by diverse international organisations. These organisations try both to draw attention to the problem but and in some cases also to suggest possible ways of handling the problem. The following section gives an overview of the most important measures at the international level and their application to the European Union to show the regulatory framework for EU instruments in the international context.

1.1. United Nations (UN)

The United Nations (UN) is one of the main actors in international law concerning the problem discussed above. This is confirmed by the purposes of the United Nations, as set forth in Art. 1 of the Charter of the United Nations.

> Art 1 of the Charter of the United Nations:
>
> The Purposes of the United Nations are:
>
> To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
>
> To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
>
> To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
>
> To be a centre for harmonizing the actions of nations in the attainment of these common ends

The importance of the UN is stressed by its size. By 30 June 2005, the United Nations has 191 members, including all European Union Member States[2]. Although the European Union is not a member of the UN because it is not a state, the EU is participating actively in the UN work as an Intergovernmental Organisation. Intergovernmental Organisations can receive a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintain permanent offices at Headquarters[3]; in this way the European Union participates in the UN policy in addition to the participation of its member states.

1.1.1. Counter Terrorism

As regards counter terrorism measures, the UN has always been very active. The UN has adopted diverse counter terrorist regulations with regard to the charitable/non-profit sector.

[2] http://www.un.org/Overview/unmember.html, 4 July 2005.

[3] http://www.un.org/Overview/missions.htm#iga

(a) Convention of 9 December 1999

Between 1963 and 1999, the UN issued 12 international conventions against terrorism. The latest, the "International Convention for the Suppression of the Financing of Terrorism" submitted on 9 December 1999 focuses on terrorist financing. This Convention entered into force on 10 April 2002 and by June 2005 was signed by 137 parties. Almost all member states of the European Union have ratified the Convention, except Ireland and the Czech Republic[4].

Art. 2 defines offences according to the Convention as follows:

> 1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
>
> (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
>
> (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.
>
> 2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
>
> (b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.
>
> 3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).
>
> 4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
>
> 5. Any person also commits an offence if that person:
>
> (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;
>
> (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;
>
> (c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
>
> (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or
>
> (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

According to Art. 8 of the Convention, all state parties shall take appropriate measures to identify, detect and freeze respectively for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in Art. 2.

Furthermore, Art. 18 of the Convention obliges the parties to cooperate in the prevention of the offences set forth in article 2 by taking all practical measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories.

To recapitulate, the Convention has three main goals: it requires parties to take steps to prevent and counteract the financing of terrorists, whether direct or indirect, through groups claiming to have charitable, social or cultural goals or which also engage in such illicit activities as drug trafficking or gun running; it commits states to hold those who finance terrorism criminally, civilly or administratively liable for such acts; and it provides for the identification, freezing and seizure of funds allocated for terrorist activities, as well as for the sharing of the forfeited funds with other states on a case-by-case basis. Bank secrecy will no longer be justification for refusing to cooperate[5].

In its Resolution 54/109 of 25 February 2000, the General Assembly urges all States to sign and ratify, accept, approve or accede to the Convention.

(b) Resolution 1373 (2001)

Furthermore, on 28 September 2001, acting under Chapter VII of the United Nations Charter the Security Council adopted Resolution 1373 (2001), reaffirming its unequivocal condemnation

[4] UN, Ratification, p. 3 – 11.

[5] http://www.unodc.org/unodc/terrorism_conventions.html, 4 July 2005.

of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts.

Resolution 1373 imposes binding obligations on all States, with the aim of combating terrorism in all its forms and manifestations.

The resolution requires Member States to, inter alia:

- deny all forms of financial support for terrorist groups (operational paragraph (o.p.) 1a, b, c, d)
- suppress the provision of safe haven, sustenance or support for terrorists (o.p. 2a, c, d, g, 3f, g)
- share information with other governments on any groups practising or planning terrorist acts (o.p. 2b, 3a, b, c)
- co-operate with other governments in the investigation, detection, arrest and prosecution of those involved in such acts (o.p. 2b, f, 3a, b, c)
- criminalize active and passive assistance for terrorism in domestic laws and bring violators of these laws to justice (o.p. 2e)
- and to become party as soon as possible to the relevant international conventions and protocols relating to terrorism (o.p. 3d).

Besides this, Resolution 1373 established under paragraph 6 the Counter-Terrorism Committee (the CTC), made up of all 15 members of the Security Council. The CTC monitors the implementation of Resolution 1373 by all states and tries to increase the capability of states to fight terrorism:

> The CTC asks every State to take specific action to meet the requirements of the resolution based on the specific circumstances in each country.
>
> The CTC seeks to establish a basis for ongoing dialogue between the Security Council and all Member States on how best to raise national capacity against terrorism.
>
> Resolution 1373 has a broad scope, encompassing domestic legislation, internal executive machinery and international co-operation. To enable States to focus on taking effective action in the areas of greatest priority for them, the CTC has instituted three stages of analysis for its work with States: Stage A
>
> The CTC first looks at whether a State has in place effective counter-terrorism legislation in all areas of activity related to resolution 1373, with specific focus on combating terrorist financing.
>
> The CTC focuses on legislation as key issue because without an effective legislative framework States cannot develop executive machinery to prevent and suppress terrorism, or bring terrorists and their supporters to justice. Countering-terrorist financing included as a Stage A priority because of the special emphasis placed on this aspect of support for terrorism in operative paragraph 1 of resolution 1373.
>
> In order to ensure a methodical and progressive approach, third and future reviews of a State's reports should continue to focus on "Stage A" until the CTC has no further comments at this stage. Stage B
>
> Once States have in place legislation covering all aspects of resolution 1373, the next phase of implementation can be broadly defined as a State, in accordance with its responsibilities, within its sovereign jurisdiction, fully to implement resolution 1373, strengthening its executive machinery to implement resolution 1373-related legislation. "Stage B" might, in the light of experience so far, include activity along effective and coordinated executive machinery covering all aspects of resolution 1373 and in particular preventing recruitment to terrorist groups, the movement of terrorists, the establishment of terrorist safe havens and any other forms of passive or active support for terrorists or terrorist groups. Effective executive machinery includes, inter alia, having in place:
>
> police and intelligence structures to detect, monitor and apprehend those involved in terrorist activities and those supporting terrorist activities,
>
> customs, immigration and border controls to prevent the movement of terrorists and the establishment of safe havens, and
>
> controls preventing the access to weapons by terrorists.
>
> Stage C
>
> Differences in circumstances mean that progress through these priorities will not be uniform. The CTC recognises that every State is an individual case; however it asks all States to move towards implementation of resolution 1373 at their fastest capable speed.
>
> Looking further ahead, the CTC will at some stage need to consider its dialogue with States who already have in place adequate legislation covering all aspects of resolution 1373 and adequate executive machinery implementing this legislation, and who have not been identified as requiring other priority attention. In such cases, the CTC might move on to monitor "Stage C" of resolution 1373 implementation, building on "Stages A and B" and covering the remaining areas of 1373.
>
> The objectives set out above may be reviewed by the CTC after a further experience of the process[6].

Even if it is not expressed explicitly, Resolution 1373 includes the misuse of funds via charitable/non-profit organisations for terrorist financing as it becomes clear from the reference to "entities" made in every paragraph.

(c) Security Council Committee Letter of 14 February 2005

[6] http://www.un.org/Docs/sc/committees/1373/priorities.html

In addition, the Security Council Committee, established pursuant to Resolution 1267 (1999) acknowledges the vulnerability of charitable/non-profit organisations for terrorist financing in its letter dated 14 February 2005 to the President of the Security Council. This report states that "those wishing to finance terrorism will abuse relatively few charities, but the threat is sufficiently real to make regulation important. States should do what they can to ensure that genuine charities are able to operate as freely as possible while ensuring that donors do not find their money diverted from good causes they wish to support."[7]

This statement is followed by an example of the misuse of a non-profit organisation[8]:

> Example: Benevolence International Foundation
>
> 1. One of the charities listed by the United Nations is Benevolence International Foundation (BIF), a quintessential example of how an organisation with an admirable purpose can be used to funnel money to sponsor terrorism and violence across the globe.
>
> 2. BIF was incorporated in the United States in 1992 and grew substantially over the years. It opened offices in at least 10 countries and provided tens of millions of dollars of "humanitarian aid" to regions around the world (including many areas of conflict), such as Afghanistan, Azerbaijan, Bosnia and Herzegovina, Pakistan and Tajikistan, as well as Daghestan and Ingushetia. BIF and its leaders, including Executive Director Enaam Arnaout, claimed its donors' money was "spent solely for charitable, humanitarian purposes".
>
> 3. Although authorities had investigated certain suspicious practices of BIF over the years, the United States and other countries only began to take action against the organisation after the attacks on 11 September 2001. In the United States, the company's assets were frozen pending investigation in December 2001, while Bosnian authorities conducted a criminal search of BIF offices there in March 2002. The Bosnian search yielded "compelling evidence of links between BIF leaders, including Arnaout," and Osama bin Laden and other Al-Qaida leaders, going back to the 1980s. The material seized included many documents never before seen by United States officials, such as the actual minutes of Al-Qaida meetings, the Al- Qaida oath, Al-Qaida organisational charts, and the "Golden Chain" list of wealthy donors to the Afghan mujahedin, as well as letters between Mr. Arnaout and Osama bin Laden, dating to the late 1980s. The letters between the two men and other evidence showed that Mr. Arnaout had functioned as an administrator for Osama bin Laden, disbursing funds and signing on his behalf. 4. In justifying its permanent freezing of BIF assets in November 2002, the United States Department of the Treasury noted that BIF and its leaders had substantial ties to Al-Qaida and Osama bin Laden (in addition to those described above), including (a) BIF "provided direct logistical support" for an Al-Qaida member and Osama bin Laden lieutenant, Mamdouh Mahmud Salim, to travel to Bosnia and Herzegovina in 1998; (b) telephone records linked BIF to Mohammed Loay Bayazid, who had been implicated in Al-Qaida's effort to obtain enriched uranium in 1993/94, and Bayazid's drivers licence application in 1994 listed the BIF office address as his own address; and (c) a member of Al-Qaida's Shura Council served as an officer in the Chechnya office of BIF. The material against BIF also demonstrated that the organisation had "altered its books to make support for an injured Bosnian fighter appear as aid to an orphan".
>
> 5. The United States Government subsequently filed terrorism and related criminal charges against Mr. Arnaout, BIF Executive Director. In addition to the evidence mentioned above, the indictment outlined details of his illicit activities including that he, as head of BIF, had diverted donor money for humanitarian supplies to support fighters in Bosnia and Herzegovina and Chechnya (such as buying them military supplies, including uniforms and communications equipment). For the Chechen fighters, he had also supplied 2,900 pairs of steel-reinforced antimine boots. Ultimately, in February 2003, Mr. Arnaout pleaded guilty to a criminal conspiracy charge and admitted that he had concealed from donors and potential donors the fact that he had diverted "a material portion of the donations received by BIF to "support fighters overseas," including supplies for combatants in Bosnia and Herzegovina and Chechnya. The court determined that he and BIF had diverted more than $300,000 from the charity's humanitarian goals to support fighters abroad. He was sentenced to 11 years and four months in prison.
>
> 6. On 21 November 2002, the United Nations added BIF to the Consolidated List, noting more than 20 countries and regions in which it was located, as well as two other names — Benevolence International Fund and Bosanska Idealna Futura — under which it operated. However, other than the United States, only three Member States have reported to the United Nations (in the reports pursuant to resolution 1455 (2003)) that they froze assets or took other action against the organisation. The Team intends to follow up with the remaining States in which the entity was reported to have been located to determine their findings or actions, if any, and will include details in its next report to the Committee.

(d) Report of the Secretary General's High Level Panel on Threats, Challenges and Change of 2 December 2004

In its report on Threats, Challenges and Change, the Secretary General's High Level Panel confirms that there is the need for all member states to increase the efforts of the member states to provide effective legal, administrative and police tools to prevent terrorism. Besides it stresses the necessity to ratify all 12 international conventions against terrorism and to adopt the eight

[7] UN, S 2005/83, p. 26, n. 84.

[8] UN, S 2005/83, p. 56, Annex III.

(respectively nine) Special Recommendations on Terrorist Financing issued by the Financial Action Task Force as well as the measures recommended in various best practice papers[9].

It is only in this report that the United Nations give, for the first time, an agreed definition of terrorism as well as the features any such definition should include:

> 4. Defining terrorism
>
> 157. The United Nations ability to develop a comprehensive strategy has been constrained by the inability of Member States to agree on an anti-terrorism convention including a definition of terrorism. This prevents the United Nations from exerting its moral authority and from sending an unequivocal message that terrorism is never an acceptable tactic, even for the most defensible of causes.
>
> 158. Since 1945, an ever stronger set of norms and laws - including the Charter of the United Nations, the Geneva Conventions and the Rome Statute for the International Criminal Court - has regulated and constrained States' decisions to use force and their conduct in war - for example in the requirement to distinguish between combatants and civilians, to use force proportionally and to live up to basic humanitarian principles. Violations of these obligations should continue to be met with widespread condemnation and war crimes should be prosecuted.
>
> 159. The norms governing the use of force by non-State actors have not kept pace with those pertaining to States. This is not so much a legal question as a political one. Legally, virtually all forms of terrorism are prohibited by one of 12 international counter-terrorism conventions, international customary law, the Geneva Conventions or the Rome Statutes. Legal scholars know this, but there is a clear difference between this scattered list of conventions and little-known provisions of other treaties, and a compelling normative framework, understood by all, that should surround the question of terrorism. The United Nations must achieve the same degree of normative strength concerning non-State use of force as it has concerning State use of force. Lack of agreement on a clear and well-known definition undermines the normative and moral stance against terrorism and has stained the United Nations image. Achieving a comprehensive convention on terrorism, including a clear definition, is a political imperative.
>
> 160. The search for an agreed definition usually stumbles on two issues. The first is the argument that any definition should include States' use of armed forces against civilians. We believe that the legal and normative framework against State violations is far stronger than in the case of non-State actors and we do not find this objection to be compelling. The second objection is that peoples under foreign occupation have a right to resistance and a definition of terrorism should not override this right. The right to resistance is contested by some. But it is not the central point: the central point is that there is nothing in the fact of occupation that justifies the targeting and killing of civilians.
>
> 161. Neither of these objections is weighty enough to contradict the argument that the strong, clear normative framework of the United Nations surrounding State use of force must be complemented by a normative framework of equal authority surrounding non-State use of force. Attacks that specifically target innocent civilians and non-combatants must be condemned clearly and unequivocally by all.
>
> 162. We welcome the recent passage of Security Council resolution 1566 (2004), which includes several measures to strengthen the role of the United Nations in combating terrorism.
>
> 163. Nevertheless, we believe there is particular value in achieving a consensus definition within the General Assembly, given its unique legitimacy in normative terms, and that it should rapidly complete negotiations on a comprehensive convention on terrorism.
>
> 164. That definition of terrorism should include the following elements:
>
> (a) recognition, in the preamble, that State use of force against civilians is regulated by the Geneva Conventions and other instruments, and, if of sufficient scale, constitutes a war crime by the persons concerned or a crime against humanity;
>
> (b) restatement that acts under the 12 preceding anti-terrorism conventions are terrorism, and a declaration that they are a crime under international law; and restatement that terrorism in time of armed conflict is prohibited by the Geneva Conventions and Protocols;
>
> (c) reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004);
>
> (d) description of terrorism as "any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act"[10].

1.1.2. Misuse of Funds

As can be seen above, the UN focuses on measures against terrorist financing. Apart from this, any other special measures to avoid misuse of funds in general are not taken by the UN.

[9] UN, A/59/565, n. 155, 150.

[10] UN, A/59/565, n. 157 – 164.

1.2. Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of policies at national and international level to combat money laundering and terrorist financing. It is housed at the headquarters of the OECD in Paris, France. Although the Secretariat is based at the OECD, FATF itself is an independent international body. It is not a permanent international organisation but is established for the time of its mandate agreed by the members. The mandate was renewed in 2004 for a further eight years.

Being an international organisation, the FATF rules are only binding for the members that accepted being subject to the rules. The European Commission as well as the EU15 are members of the FATF[11].

The FATF was established by the G-7 Summit of Paris in July 1989 in response to mounting concern over money laundering. In October 2001 the FATF mandate was expanded, and now includes measures to combat terrorist financing. It is a "policy-making body" that works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. Furthermore, the FATF monitors its members' progress in implementing anti money laundering or counter terrorist financing measures, reviews such measures and promotes the adoption and implementation of appropriate measures globally[12].

1.2.1. Counter Terrorism

The FATF stresses the importance of two basic operating principles: the need to collaborate with the United Nations, especially ratifying and implementing its anti-terrorist conventions and resolutions; and the need for legislators to identify, define and criminalise terrorist financial activity[13].

The Special Recommendation VIII:

In controlling the financial activity there are on one hand relatively easy things to do, like controlling the organisations that are working within the normal regulatory relationships of the formal economy. On the other hand, the authorities have also to deal with the informal economy that channels money outside the global banking system. Therefore, it is necessary to establish visibility and traceability requirements for all money-collection and transfer activities, including those of the informal economy and the charitable/non-profit sector[14].

That is why in the context of the "Support Against Terrorist Financing" project, the focus is set to the implementation of Special Recommendation VIII on non-profit organisations.

> Special Recommendation VIII: non-profit organisations
>
> "Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:
>
> • by terrorist organisations posing as legitimate entities;
>
> • to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
>
> • to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations"[15]

The FATF has agreed on the Special Recommendations on terrorist financing, which, when combined with the Forty Recommendations of the FATF on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts. The original eight recommendations were extended to nine with the adoption of the Special Recommendation IX on cash couriers in October 2004[16].

The FATF worked to identify weaknesses in the world-wide efforts to combat terrorist financing and the guidance on implementing the Special Recommendation VIII focuses on the prevention of misuse of non-profit organisations for the financing of terrorism. Theses types of organisations have been identified as a crucial weak point in the global struggle to stop terrorist funding at its source[17].

[11] http://www.fatf-gafi.org/document/5/0,2340,en_32250379_32236869_34310917_1_1_1_1,00.html#Areallcountries

The EU 10 countries are no FATF member states. But as a member of the FATF, the European Commission is committed to implementing the anti-money laundering (AML) and counter terrorist financing (CFT) measures agreed to by the FATF members, in particular the FATF Forty Recommendations and Eight Special Recommendations. To monitor and assess the progress of its members in implementing FATF standards, the FATF conducts mutual evaluation exercises. Because the EC member countries are not members of the FATF themselves, their mutual evaluations are conducted in co-ordination with the EC. In this way, the FATF evaluates the AML/CFT measures taken by the EC member countries.

[12] FATF, AR 05, p. 6; AR 04, p. 3; FATF, War on Terrorism, p. 2.

[13] FATF, War on Terrorism, p. 9.

[14] FATF, War on Terrorism, p. 10.

[15] FATF, SR, p. 2.

[16] FATF, SR, p. 1.

[17] FATF, Best Practice, p. 1.

This should become very clear by two examples given by the FATF[18]:

Example 1: Non-profit front organisation

In 1996, a number of individuals known to belong to the religious extremist groups established in the south-east of an FATF country (Country A) convinced wealthy foreign nationals, living for unspecified reasons in Country A, to finance the construction of a place of worship. These wealthy individuals were suspected of assisting in the concealment of part of the activities of a terrorist group. It was later established that "S", a businessman in the building sector, had bought the building intended to house the place of worship and had renovated it using funds from one of his companies. He then transferred the ownership of this building, for a large profit, to Group Y belonging to the wealthy foreigners mentioned above.

This place of worship intended for the local community in fact also served as a place to lodge clandestine "travellers" from extremist circles and collect funds. For example, soon after the work was completed, it was noticed that the place of worship was receiving large donations (millions of dollars) from other wealthy foreign businessmen. Moreover, a Group Y worker was said to have convinced his employers that a "foundation" would be more suitable for collecting and using large funds without attracting the attention of local authorities. A foundation was thus reportedly established for this purpose.

It is also believed that part of "S's" activities in heading a multipurpose international financial network (for which investments allegedly stood at USD 53 million for Country A in 1999 alone) was to provide support to a terrorist network. "S" had made a number of trips to Afghanistan and the

United States. Amongst his assets were several companies registered in Country C and elsewhere.

One of these companies, located in the capital of Country A, was allegedly a platform for collecting funds. "S" also purchased several buildings in the south of Country A with the potential collusion of a notary and a financial institution.

When the authorities of Country A blocked a property transaction on the basis of the foreign investment regulations, the financial institution's director stepped in to support his client's transaction and the notary presented a purchase document for the building thus ensuring that the relevant authorisation was delivered. The funds held by the bank were then transferred to another account in a bank in an NCCT jurisdiction to conceal their origin when they were used in Country A.

Even though a formal link has not as yet been established between the more or less legal activities of the parties in Country A and abroad and the financing of terrorist activities carried out under the authority a specific terrorist network, the investigators suspect that at least part of the proceeds from these activities have been used for this purpose.

Example 2: Fraudulent solicitation of donations

One non-profit organisation solicited donations from local charities in a donor region, in addition to fund raising efforts conducted at its headquarters in a beneficiary region. This non-profit organisation falsely asserted that the funds collected were destined for orphans and widows. In fact, the finance chief of this organisation served as the head of organised fundraising for Usama bin Laden. Rather than providing support for orphans and widows, funds collected by the non-profit organisation were turned over to al-Qaida operatives.

1.2.2. Misuse of Funds

As it is clearly stated by the FATF documents, the main focus of all FATF measures lies in the prevention of terrorist financing. As a side effect they may affect also the misuse of funds in general, but this is not the focal point.

A number of donor countries, including the EU are currently assessing implications for Special Recommendation VIII for their own engagement, regulation and funding of non-governmental organisations.

The European Commission is to propose a 'Code of Conduct for Non Profit Organisations to promote transparency and accountability Best Practices' in response to FATF Special Recommendation VIII by the end of 2005. The Directorate General Enterprise and the Directorate General Justice, Freedom and Security presented a draft action plan in April 2005 (which has been reworked and revised into a Draft Communication) to implement Special Recommendation VIII, which includes various aspects on monitoring, regulating, auditing and transparency of NGOs[19]. Connected to this, the preliminary analysis of the charitable sector report is meant to support the implementation and to give detailed information about the measures to be taken.

1.3. Organisation for Economic Co-operation and Development (OECD)

The Organisation for Economic Co-operation and Development (OECD), an intergovernmental organisation, is a unique forum where the governments of 30 market democracies work together to address the economic, social and governance challenges of globalisation, as well as to exploit its opportunities. The OECD provides a

[18] FATF, Best Practice, p. 7.

[19] BOND, GSD Update May 2005, p. 2.

setting where governments can compare policy experiences, seek answers to common problems, and identify good practice and co-ordinate domestic and international policies. In the OECD work, not only the OECD members are involved but also non-members, business, labour and civil society take part[20].

At the beginning of 2005 all EU15 countries as well as the Czech Republic, Hungary, Slovakia and Poland were member countries of the OECD[21].

1.3.1. Counter Terrorism

The OECD is a forum where peer pressure can act as a powerful incentive to improve policy and implement "soft law" – non-binding instruments such as the OECD Corporate Governance Principles – and can on occasions lead to formal agreements or treaties[22]. Besides the implementation of rules, the OECD also takes into consideration the work of other international organisations.

It thereby not only supports the Financial Action Task Force Special Recommendations on Terrorist Financing[23] but also developed the Millennium Development Goals as implementation of the UN Millennium Declaration, which were recognised by the UN General Assembly as part of the road map for implementing the Millennium Declaration.[24] It is in this context that the OECD work is related to the counter terrorism fight.

1.3.2. Misuse of Funds

Even if it is not the main focus of the implementation of the Millennium Development Goals, the prevention of misuse of funds can be regarded as a side effect of these measures.

1.4. Council of Europe (CoE)

The Council of Europe is a political inter-governmental organisation. Its permanent headquarters are in Strasbourg, France. It represents 46 European pluralist democracies, among them all EU25 member states.

Its work is focused on the protection of Human Rights, to ensure the democratic stability, to seek solutions to social problems such as intolerance, discrimination against minorities, human cloning, drugs, terrorism, corruption and organised crime and to promote social rights[25].

1.4.1. Counter Terrorism

The "European Convention for the Suppression of Terrorism", released on 27 January 1977 by the Council of Europe lays down ground rules for extradition of suspected terrorists between contracting states and to simplify related procedures, but does not cope with counter terrorist financing. Also the Amending Protocol on the Convention of 13 February 2003 did not bring major changes to the subject[26].

Developments in the area of legal action against terrorism began with the work of the Multidisciplinary Group on International Action against Terrorism (GMT), a governmental committee of experts. The GMT identified a number of priority areas for action by the Council of Europe and elaborated the Amending Protocol updating of the 1977 European Convention on the Suppression of Terrorism.

In 2003, the Council of Europe set up the Committee of Experts on Terrorism (CODEXTER) which was made responsible for coordinating and following up the counter-terrorist activities of the Council of Europe in the legal field. The priority activities identified by the GMT were supplemented by possible areas for further action identified at the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003).

In June 2004, the CODEXTER began work on the elaboration of a draft convention on the prevention of terrorism. The draft convention was finalised by the CODEXTER in February 2005 and the Council of Europe Convention for the Prevention of Terrorism[27] was opened for signature at the III Summit of Heads of State and Government of the Council of Europe in Warsaw on 16 May 2005.

By July 2005 the Convention on the Prevention of Terrorism was signed by 19 countries, including the following EU member states: Austria, Cyprus, Denmark, Finland, Italy, Luxembourg, Malta, Poland, Portugal, Spain, Sweden and the United Kingdom[28].

[20] OECD, The OECD, p. 7, 27; OECD, AR 05, p. 7.

[21] OECD, AR 05, p. 147.

[22] OECD, AR 05, p. 7; OECD, The OECD, p. 7.

[23] UN, A/59/565, n. 150; OECD, AR 05, p. 138.

[24] UN, A/57/270, n. 38, 29; OECD, AR 05, p. 87.

[25] http://www.coe.int/T/E/Com/About_Coe/Brochures/At_a_glance.asp (July 6, 2005).

[26] http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Fight_against_terrorism/2_Adopted_Texts/Summary%20of%20the%20Amending%20Protocol.asp#TopOfPage (July 6, 2005).

[27] CETS No. 196.

[28] http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Fight_against_terrorism/, 6 July 2005.

The purpose of the Convention is to enhance the efforts of the parties in preventing terrorism by means of taking appropriate measures particularly in the field of law enforcement authorities and other bodies as well as in the fields of education, culture, information and public awareness raising. All parties should develop the cooperation among national authorities (Art. 2, 3 of the Convention).

Even if the Convention does not expressively talks about terrorist financing, it becomes clear from the synopsis of its Art. 1 and the treaties listed in the Annex, particularly with the reference to the UN Convention for the Suppression of the Financing of Terrorism, that counter terrorist financing measures are included.

1.4.2. Misuse of Funds

The Council of Europe published the "Fundamental Principles on the Status of Non-Governmental Organisations in Europe" on 13 November 2002. The principles are not meant to be a legislative proposal, but to recommend the implementation of a number of principles which should shape relevant legislation and practice concerning non-governmental organisations[29]. In particular, the rules on fundraising of non-governmental organisations and the accounting requirements shall prevent fraudulent use of funds[30].

1.5. European Union

At the special European Council held on 15/16 October 1999 in Tampere, the European Union decided to maintain and develop an area of freedom, security and justice in the Union. This was supposed to be reached in particular by an improved co-operation against cross-border crimes[31].

1.5.1. Counter Terrorism

Following the events in September 2001, the European Union established a number of measures on the counter terrorism fight, including not only legislative actions but also institutional measures.

There are three focal areas in the fight against terrorism that have to be considered:

- enhanced traceability of financial transactions
- greater transparency of legal entities
- improved co-operation in the exchange of information[32].

(a) Council of the European Union

The European Council declared in its extraordinary meeting of 21st September 2001 that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union.

On 19 October 2001 the European Council called for particular attention to be given to increased co-operation between the operational services responsible for combating terrorism and effective measures to combat the funding of terrorism.

There are a wide range of legislative actions taken by the Council of Europe (also in co-operation with the Parliament and the Commission). It contains inter alia some framework decisions on the embodiment of the counter terrorism fight as well as the political commitment of the Member States to become party of the 12 UN conventions on terrorism[33].

In its Declaration on Combating Terrorism of 25th March 2004 the European Council focuses on strategically achievable tasks. It requires in its second objective on the European Union and its members to take all necessary measures to "reduce the access of terrorists to financial and other economic resources"[34].

The action plan to achieve the second objective states that the effectiveness of EU asset freezing procedures should be ensured and operational links as well as cooperation between relevant bodies to facilitate enhanced exchange of information on terrorist financing should be established and improved.

Besides, it strengthens the development and implementation of an EU strategy on the suppression of terrorist financing, including the regulation of charitable organisations and alternative remittance systems. Additional, it stresses the importance of the co-operation with the Financial Action Task Force (FATF) on all issues regarding the financing of terrorism; it has to be ensured that the EU legal framework is adapted to the eight special recommendations on terrorist financing[35].

As regards institutional measures, there was the decision by the Justice, Freedom and Security

[29] CoE, Status NGO, EM n. 4.

[30] CoE, Status NGO, FP n. 50, 53, 60, 61; EM n. 57, 66 f.

[31] SEC (2003) 414, p. 1.

[32] JAI/D2/NSK D (2004) 869, p. 2.

[33] SEC (2003) 414, p. 3; 4-9.

[34] Council of the European Union, 7906/04, p. 10, 15.

[35] Council of the European Union, 7906/04, p. 15 f.

Council on 20 September 2001, to establish a special anti-terrorism unit at Europol. Besides this, the joint Council (the Council of Economics and Finance ECOFIN together with the Justice and Home Affairs Council) of 16 October 2001 called on the Member States to reinforce the co-operation between their Financial Intelligence Units, via the FIU.NET project.

In addition, the EU presents annual reports prepared by the Council and the Commission to the Counter Terrorism Committee of the UN established by UN Security Council Resolution 1373 (2001)[36].

(b) European Commission

The European Commission as a FATF member has to implement not only the Forty Recommendations to combat money laundering but also the eight Special Recommendations on the financing of terrorism.

Associated with this, the Commission issued a Communication on November 30, 2005[37] to assure the implementation of Special Recommendation VIII. This document focuses on creating a balance between strengthening the donor confidence in the charitable/non-profit sector by encouraging transparency and accountability and stabilising the reputation of the legitimate entities of the sector[38].

Furthermore, the European Commission is working together with the Council of the European Union also on the matter of counter terrorism and supports the Councils work, e.g. the FIU.NET project[39].

In particular it may be pointed out that, in response to the European Council Declaration, the European Commission has published five Communications[40] dealing with combating terrorism. Among these the Communication on the Prevention of and the Fight against Terrorist Financing stresses the importance of transparency as a core issue with regard to the charitable/non-profit sector[41]. Considering the rising number of charitable/non-profit organisations and the increased amount of aid dispensed, the need for transparency is more than emphasised.

It was in this context that the European Commission decided to enhance its automatic intelligence gathering, information extraction and analysis tools to apply to the charitable sector[42]. The European Commission's Joint Research Centre's Institute for the Protection and Security of the Citizens, Support to External Security Unit, was asked to undertake a research on the charitable/non-profit sector. This research is being carried out as a feasibility study on gathering information about non-governmental/non-profit organisations for the mutual benefit of donors, the organisations themselves and international organisations. The work is being done in collaboration with the European Commission Directorate General Justice, Freedom and Security, Internal Security and Criminal Justice Directorate, Fight against Economic, Financial and Cyber Crime Unit (JLS) on mapping the charitable/non-profit sector in the EU25 along a number of dimensions that play a role in monitoring. It is expected to formulate information requirements such as reporting expected from EU25 national registration systems for the organisations, recommendations for compatibility across systems, as well as the potential establishment of a preliminary set of risk indicators for the sector. Furthermore it should contribute to the goals of improving financial transparency in the charitable sector and eventually the establishment of an EU Code of Practice.

The research also contributes to the "Inter-service group on the internal aspects of the fight against terrorism". Among other things, this group is charged with monitoring those measures of the relevant EU Action Plan that are attributed to the Commission. This work of the Joint Research Centre thereby contributes to the "Research on security aspects related to terrorism" in the context of an overall effort to strengthen the fight against terrorist financing and under this heading, the specific problem of probable diversion of funds from non-profit organisations for purposes of terrorist financing.

1.5.2. Misuse of Funds

It is in the context of the research project of the Joint Research Centre that it is not only looking on the specific misuse of fund for terrorist financing but aims to the improve the financial transparency

[36] SEC (2003) 414, p. 10, 13.

[37] http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0620en01.pdf

[38] JAI/D2/DB D (2005)3832, p. 1.

[39] JAI/D2/NSK D (2004) 869, p. 6.

[40] http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2004/com2004_0221en01.pdf; http://europa.eu.int/comm/justice_home/doc_centre/criminal/terrorism/doc/com_2004_698_en.pdf; http://europa.eu.int/comm/justice_home/doc_centre/criminal/terrorism/doc/com_2004_700_en.pdf; http://europa.eu.int/comm/justice_home/doc_centre/criminal/terrorism/doc/com_2004_701_en.pdf; http://europa.eu.int/comm/justice_home/doc_centre/criminal/terrorism/doc/com_2004_702_en.pdf

[41] COM (2004) 700, p. 8.

[42] COM (2004) 700, p. 8.

of the charitable/non-profit sector and prevent the misuse of funds in general.

1.6. Summary

As can be clearly seen from the sections, the problem of misuse of aid funds in general and for terrorist financing in particular of the non-profit/charitable sector are widely recognised in the international context. These problems did not surface recently but have been known and been subject to international action for many years. Closely linked with the recognition of the danger of the misuse of aid funds, is the awareness of the general importance of the non-profit sector. As a result all attempts to minimise the risk of fund misuse are restricted by the search not to limit the non-profit activity more than absolutely necessary.

It is very surprisingly that despite the general agreement on the need of action against misuse of aid funds, there has been no general accepted attempt for one international problem definition. Only in the references made e.g. by the Financial Action Task Force to the related work of the United Nations or by the European Union to the work of the Financial Action Task Forces as well as the actions undertaken by the United Nations, prove that the organisations are trying to collaborate within the bounds of possibility. It is only this approach that should be pursued if results are to be achieved at an international level.

2. International approaches to the solution

There are various attempts to deal with the problems described in previous sections. The problem of misuse of funds in the charitable/non-profit sector not only, but also in the context of terrorist financing, has to be considered as part of a wider correlation.

It has been recognised on various occasions that the charitable/non-profit sector itself needs to be structured. This means that mechanisms to avoid the misuse of funds may need to be expanded. One possibility could be the combination of self regulation of the non profit sector with state regulation. This requires taking into consideration the different legal forms of entities joined together under the description "non-profit sector". As a matter of the lack of homogeneity in the sector, there are lot of different approaches to solve the problems like regulations concerning different legal forms of the sector, best practices or certificates.

The following is meant to give an overview of some of the more important of these projects.

2.1. United Nations (UN)

The measures undertaken by the United Nations have already been presented above in 1.1 on page 18.

2.2. Financial Action Task Force (FATF)

In addition to the Special Recommendations on Terrorist Financing and in particular to support the implementation of Special Recommendation VIII on Non-profit Organisations, the FATF published "International best practices" to combat the abuse of non-profit organisations. They especially aim to provide adequate measures to prevent non-profit organisations being misused for terrorist financing. It gives special emphasis to the financial transparency and the establishment of oversight bodies. The best practices are meant to provide guidance to the FATF members in implementing Special Recommendation VIII in offering a range of options as regards measures to be taken[43].

2.3. Organisation for Economic Co-operation and Development (OECD)

There are no further measures by the Organisation for Economic Co-operation and Development (OECD) than the ones already described under 1.3 on page 24.

2.4. Council of Europe (CoE)

The measures undertaken by the Council of Europe have already been presented above 1.4 on page 25

2.5. European Union

The variety of measures undertaken at the EU level only affirms the diversity of the sector.

Apart from the different regulations concerning counter terrorist financing measures (see 1.5.1. on page 26) there are also other schemes concerned with avoiding misuse of funds.

In June 1997, the European Commission presented its "Communication on Promoting the role of Voluntary Organisations and Foundations in

[43] FATF, Best Practices, p. 1.

Europe", intended to initiate a dialogue between the Commission and the key actors in the sector. It brings to the attention of policy makers the increasing importance of Associations and Foundations for the development of Europe and suggests specific measures at the European level in favour of the development of the sector, in particular the introduction of EU regulation for Foundations, Associations and other legal forms[44]. Even if the report generated by this Commission's Communication was never published due to the restructuring of Commission services, this path was followed in two different ways.

On one hand a draft Regulation on the Statute for a European Association was proposed. The proposal was initiated in 1992 by the Commission and discussed within the Council until 1996. Work on the proposal had been stopped until 2002. The European Commission was working on modifications on the "Amended proposal for a Council Regulation on the Statute for a European Association", dated 6 December 2002, concerning the possible inclusion of transparency and accountability measures[45]. However, in September 2005, the proposal was withdrawn[46].

On the other hand the voluntary organisations in general have been promoted.

In 2000 the Commission adopted the discussion paper "The Commission and Non-Governmental Organisations: Building a stronger partnership", recognising the need to improve the relationship with voluntary sector organisations and aiming to provide an overview of the existing relationships between the Commission and Non-Governmental Organisations as well as possible ways to develop further measures[47].

The European Commission stated in 2001 that the civil society plays an important role in giving voice to the concerns of citizens and delivering services that meet peoples' needs. It was also stressed that the organisations forming part of this sector should follow the principles of good governance, including accountability and openness[48].

In November 2004, the Eurofestation 2004 conference was held to present the "Roadmap to 2010" to outline the further development of volunteering policy in the EU and to present recommendations to the European Union and its Member States. It is based on a research conducted in EU25 Member States on volunteering policies organised by the Netherlands Association of Municipalities (VNG) and CIVIQ (the Dutch Volunteer Centre) under the auspices of the Dutch Ministry of Health, Welfare and Sport and promoted by the Dutch presidency of the European Union in the second half of 2004[49].

The document recommends, amongst other points, the introduction of European principles regarding charitable fundraising, particularly as regards cross-border practices. Furthermore, it stresses the importance of linking external aid policies and programmes to volunteering also with regard to achieving the Millennium Development Goals. Besides it stresses the importance to develop mechanisms for non-profit sector outreach, both within and beyond the EU as well as to facilitate a European exchange of information on good practices[50].

In July 2005, the European Commission also launched the "Draft Recommendations to Member States regarding a Code of Conduct for non-profit organisations to promote transparency and accountability best practices". It follows the call from the Council of the European Union that stated in the "Council Declaration on the EU response to the London bombings of July 13, 2005" that it has to be agreed by December 2005 on a Code of Conduct to prevent the misuse of charities by terrorists[51]. The main content of the draft recommendations were discussed at the "Round Table Meeting of 12 April 2005 on Prevention of Terrorist Financing via the Non-profit Sector"[52]. After a consultation period for the public, the draft is currently being elaborated and the report will be published within 3 years.

The document is meant to guide the EU implementation of the Financial Action Task Force Special Recommendation VIII on non-profit organisations[53]. For the moment, the Draft Code of Conduct encourages the Member States to pay attention to the vulnerability of the non-profit sector for terrorist financing and to encourage compliance with the Code of Conduct for the relevant organisations as well as the co-operation at the investigation level of and between the Member States. Seen from its point of focus the Code of Conduct seems to be the element that has been long awaited at the European level to

[44] COM (1997) 241, p. 3 f; 9 f.

[45] COM, modifications, p. 1; Council of the European Union 14791/02, p. 1-5.

[46] COM(2005)462, p.7

[47] COM, NGO partnership, p. 2.

[48] COM (2001) 428, p. 14, 15.

[49] Civiq, p. 6, 8 ; Eurofestation, p. 1.

[50] Eurofestation, p. 8 ; 10.

[51] http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/jha/85703.pdf, 27 July 2005.

[52] JLS, Minutes 12.04.05, p. 5 ff; JAI/D2/DB D(2005)3832, p. 2 ff.

[53] JLS, Draft Code of Conduct, p. 1.

take a step forward in solving the misuse problems.

2.6. Private Organisations

Besides the international institutions and organisations, there are also diverse private organisations working on attempts to solve the above mentioned problems within the bounds of their abilities.

2.6.1. European Foundations Centre (EFC)

In addition to the proposed regulation on the Statute for European Associations there is the "Proposal for a Regulation on a European Statute for Foundations" prepared by the European Foundation Centre (EFC) in January 2005.

The EFC is an international not-for profit associations under Belgian law and is not part of the European Union. But the EFC participated in the consultation of the foundations sector in 2002 carried out by a European Commission's High Level Group of Company Law Experts in the context of proposals for European legal forms of entities to assess the feasibility of developing a European Foundation Statute as part of the Action Plan Modernising Company Law[54].

As a final recommendation the EFC as well as the High Level Group stress the importance of assessing further studies of the feasibility of a foundations statute. The EFC proposal thereby could facilitate the potential development of a European legal form for foundations as an optional European legal instrument[55].

The European Commission is discussing on implementing equal or similar transparency and accountability measures in this proposal as in the European Associations document. This attempt supports the characteristics of the European Statute for foundations as a benchmark in terms of governance, transparency and accountability in cross-border work and financing with special regard to the prevention of terrorist financing[56].

2.6.2. International Committee on Fundraising Organisations (ICFO)

The International Committee on Fundraising Organisations (ICFO) was created as an umbrella organisation for non-governmental organisations to exchange information and develop international standards. The main aim of ICFO is to ensure that fundraising for charitable purposes is being organised and performed in a satisfactory manner and that the administration of the collected funds is adequate.

The ICFO recognises that the non-governmental organisations (NGOs) form an important part of the society, as the organisations not only provide services to people and make special contributions to the political debate, but are also regarded as counterpart of the economical and political forces in the society. Therefore the organisation tries to set up international standards for non-governmental charitable organisations, e.g. guidelines for proper fundraising, principles for accounting and transparency and rules for public access[57].

As there are many states that do not protect donors from fraudulent fundraising appeals, private or semi-official monitoring and advisory bodies have been established.

The stipulations of the bodies organised by the ICFO are match on many points, there is still divergence on important points, e.g. the way they define their target group, their standards or the items they are monitoring[58].

2.6.3. John Hopkins Comparative Nonprofit Sector Project

The Johns Hopkins Comparative Nonprofit Sector Project is a systematic effort to analyze the scope, structure, financing, and role of the private non-profit sector in a cross-section of countries around the world in order to improve the knowledge and understanding of this sector, and to provide a sounder basis for both public and private action towards it. In particular, the project aims to document the scope, structure, financing, and role of the non-profit sector and tries to explain the variety of the sector as well as the impact these organisations are having. The approach adopted to pursue these objectives comprises comparative, collaborative and consultative features. Their realisation includes a wide range of data gathering and analysis in a wide assortment of countries[59]. As an intermediate result, it has been stated that the non-profit sector is a sizeable and highly dynamic component of societies and constitutes a major economic force that contributes to economics as well as social life in an important way[60].

[54] COM (2003), 284, p. 22; EFC, Rationale, p. 1.

[55] EFC, Proposal, p. 5 f.

[56] EFC, Rationale, p. 4; JLS, Minutes 12.04.05, p. 3, 4.

[57] Wilke, p. 1, 2; Guet, p. 8.

[58] Guet, p. 8.

[59] Salamon/Anheier in Global Civil Society, p. 5-7.

[60] Salamon/Anheier in Global Civil Society, p. 32.

2.7. Summary

It has become more than clear that there are a lot of different and in many cases apparently helpful approaches to the solution of the misuse problems. Nevertheless it seems that none of the attempts can give a satisfactory response to the question of how to guarantee the freedom of the non-profit sector in its actions under the most possible transparency and traceability of its funding. Connected with this, it is the more surprisingly that so far there is no common approach to a solution of the different organisations dealing with the relevant questions. It seems that the international organisations are working rather independently from one another.

Chapter 2.
Classification and Definition

1. Lack of common definition

As a first step in approaching a regulation for the non-profit sector, the non-profit sector has to be defined. This is necessary to understand who the actors are in the non-profit sector that is to be regulated and to identify already existing regulation that may be applicable.

There is only one common agreement on the criteria for the non-profit character of an organisation: this is that the non-profit sector forms part of the associative world. The associative world is composed apart form the non-profit organisations, of the entities acting as intermediaries between their membership and the public authorities as well as of those of campaigning nature. One can observe that there is one common element for all associative bodies that distinguishes them from other economic operators. This is the association's management is not supposed to profit from the entity's surpluses[61].

It is more than clear that this definition is not suitable to clarify the composition of the non-profit sector. Moreover it states that there is a lack of an EU level definition of non-profit organisations.

A common definition for the non-profit sector in Europe needs to be addressed.

It seems reasonable to compare the definitions used in international law as well as in the national laws of the Member States to find common elements. Therefore, this section will look at the different definitions for associations, foundations, non-profit organisations, non-governmental organisations and other legal entities that may operate in non-profit activity in both, the international context and the national laws of the EU15 Member States.

The section does not include definitions for political parties, trade unions, the church and economic entities.

[61] Ioakimidis, p. 1.

2. Definitions in international law for the non-profit sector

In the international law, there are a wide range of definitions as regards the non-profit sector. The following chapter gives an overview of the various definitions used by major international organisations and by private organisations focused on the study of the non-profit sector.

The definitions span from the widest term "Civil Society" to "Voluntary Sector" and include "Non-Governmental Organisations" as well as "Non-profit Organisations".

2.1. International Organisations

2.1.1. United Nations (UN)

The United Nations have defined Civil Society as well as Non-Governmental Organisations.

(a) Civil Society

Civil Society is the associational activity of citizens (outside their families, friends and workplace) that is entered into voluntarily to advance their interests, ideas, ideals and ideologies. It does not include associational activity of people for profit-making purposes (the private sector) or for governing (the state or public sector). The components of civil society in which the UN is interested include:

- Mass organisations: formally constituted organisations which are mostly (but not always) membership organisations and which represent the interests of particular population groups. The most important within the UN system comprise: organisations representing women, children and youth, peasants, the unemployed, indigenous people, the elderly and disabled people.

- Trade-related organisations: membership organisations representing people through the profession or means of employment they pursue. The most important within the UN system comprise: trade unions and their international umbrella federations; professional associations representing employees in the health, education, legal and other professional

fields; the scientific and technological community; farmers' associations/unions; producer cooperatives (though some are akin to business partnerships and fit better in the private sector).

- Faith-based organisations: mostly membership religious organisations either dedicated to worship or the advancement of a creed or ancillary to such a cause. The most important within the UN system are international umbrellas of faiths, inter-faith organisations, and development organisations linked to particular faiths.

- Academia: communities of scholars, researchers, intellectuals and other academics. Many of these (particularly think tanks and specialised centres within Universities) are interested in particular UN activities; some simply study these but others have an ideological or advocacy bent and seek to influence them - particularly the think tanks, which may receive funding from commercial or other interested parties.

- Public Benefit NGOs: organisations formed to provide a benefit to the general public or the world at large either through the provision of specific services or through advocacy. Most are membership organisations, recruiting those who share the common interest; they are mostly considered philanthropic or public service organisations because their programmes reach well beyond their members. Examples include environment, development, volunteering NGOs, human rights, reproductive rights organisations, consumer groups and cooperatives, disarmament organisations, anti-corruption watchdog organisations (the mainstream international development NGOs comprise the one category that conspicuously is not generally membership-based), international networks of like-NGOs.

- Social movements and campaign networks: Mass and loose associations of people who share common experiences or "framings" and who elect to work together to redress identified wrongs. Examples include the landless peasant movements, the anti-globalization movement, the Tobin-Tax movement, the feminist movement. There is overlap in this category with mass organisations and NGOs[62].

(b) Non-Governmental Organisations

For Non-Governmental Organisations, there are various definitions by different organisations of the UN.

(i) UN

According to the UN, a non-governmental organisation (NGO) is any non-profit, voluntary citizens' group which is organised on a local, national or international level. Task-oriented and driven by people with a common interest, NGOs perform a variety of service and humanitarian functions, bring citizen concerns to Governments, advocate and monitor policies and encourage political participation through provision of information. Some are organised around specific issues, such as human rights, environment or health. They provide analysis and expertise, serve as early warning mechanisms and help monitor and implement international agreements. Their relationship with offices and agencies of the United Nations system differs depending on their goals, their venue and the mandate of a particular institution[63].

(ii) Economic and Social Council (ECOSOC)

The United Nation's Economic and Social Council (ECOSOC) defines the Non-Governmental Organisations in its Resolution 1996/31 on Arrangements for Consultation with Non-Governmental Organisations as follows:

Part I

Principles to be applied in the establishment of consultative relations

- The organisation shall be concerned with matters falling within the competence of the Economic and Social Council and its subsidiary bodies.

- The aims and purposes of the organisation shall be in conformity with the spirit, purposes and principles of the Charter of the United Nations.

- The organisation shall undertake to support the work of the United Nations and to promote knowledge of its principles and activities, in accordance with its own aims and purposes and the nature and scope of its competence and activities.

- Except where expressly stated otherwise, the term "organisation" shall refer to non-governmental organisations at the national, sub regional, regional or international levels.

- Consultative relationships may be established with international, regional, sub regional and national organisations, in conformity with the Charter of the United Nations and the principles and criteria established under the

[62] http://www.un.org/reform/pdfs/categories.html.

[63] http://www.ngos.net/ngos/ngoinfo/define.html.

present resolution. The Committee, in considering applications for consultative status, should ensure, to the extent possible, participation of non-governmental organisations from all regions, and particularly from developing countries, in order to help achieve a just, balanced, effective and genuine involvement of non-governmental organisations from all regions and areas of the world. The Committee shall also pay particular attention to non-governmental organisations that have special expertise or experience upon which the Council may wish to draw.

- Greater participation of non-governmental organisations from developing countries in international conferences convened by the United Nations should be encouraged.

- Greater involvement of non-governmental organisations from countries with economies in transition should be encouraged.

- Regional, sub regional and national organisations, including those affiliated to an international organisation already in status, may be admitted provided that they can demonstrate that their programme of work is of direct relevance to the aims and purposes of the United Nations and, in the case of national organisations, after consultation with the Member State concerned. The views expressed by the Member State, if any, shall be communicated to the non-governmental organisation concerned, which shall have the opportunity to respond to those views through the Committee on Non-Governmental Organisations.

- The organisation shall be of recognised standing within the particular field of its competence or of a representative character. Where there exist a number of organisations with similar objectives, interests and basic views in a given field, they may, for the purposes of consultation with the Council, form a joint committee or other body authorised to carry on such consultation for the group as a whole.

- The organisation shall have an established headquarters, with an executive officer. It shall have a democratically adopted constitution, a copy of which shall be deposited with the Secretary-General of the United Nations, and which shall provide for the determination of policy by a conference, congress or other representative body, and for an executive organ responsible to the policy-making body.

- The organisation shall have authority to speak for its members through its authorised representatives. Evidence of this authority shall be presented, if requested.

- The organisation shall have a representative structure and possess appropriate mechanisms of accountability to its members, who shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision-making processes. Any such organisation that is not established by a governmental entity or intergovernmental agreement shall be considered a non-governmental organisation for the purpose of these arrangements, including organisations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organisation.

- The basic resources of the organisation shall be derived in the main part from contributions of the national affiliates or other components or from individual members. Where voluntary contributions have been received, their amounts and donors shall be faithfully revealed to the Council Committee on Non-Governmental Organisations. Where, however, the above criterion is not fulfilled and an organisation is financed from other sources, it must explain to the satisfaction of the Committee its reasons for not meeting the requirements laid down in this paragraph. Any financial contribution or other support, direct or indirect, from a Government to the organisation shall be openly declared to the Committee through the Secretary-General and fully recorded in the financial and other records of the organisation and shall be devoted to purposes in accordance with the aims of the United Nations.

- In considering the establishment of consultative relations with a non-governmental organisation, the Council will take into account whether the field of activity of the organisation is wholly or mainly within the field of a specialised agency, and whether or not it could be admitted when it has, or may have, a consultative arrangement with a specialised agency.

- The granting, suspension and withdrawal of consultative status, as well as the interpretation of norms and decisions relating to this matter, are the prerogative of Member States exercised through the Economic and Social Council and its Committee on Non-Governmental Organisations. A non-governmental organisation applying for general or special consultative status or a listing on the Roster shall have the opportunity to respond to any objections being raised in the Committee before the Committee takes its decision.

- The provisions of the present resolution shall apply to the United Nations regional commissions and their subsidiary bodies mutatis mutandis.

- In recognizing the evolving relationship between the United Nations and non-governmental organisations, the Economic and Social Council, in consultation with the Committee on Non-Governmental Organisations, will consider reviewing the consultative arrangements as and when necessary to facilitate, in the most effective manner possible, the contributions of non-governmental organisations to the work of the United Nations[64].

(iii) World Bank

The World Bank, one of the United Nations' specialised agencies, defines an NGO as follows:

"The diversity of NGOs strains any simple definition. They include many groups and institutions that are entirely or largely independent of government and that have primarily humanitarian or cooperative rather than commercial objectives. They are private agencies in industrial countries that support international development; indigenous groups organised regionally or nationally; and member-groups in villages. NGOs include charitable and religious associations that mobilise private funds for development, distribute food and family planning services and promote community organisation. They also include independent cooperatives, community associations, water-user societies, women groups and pastoral associations. Citizen Groups that raise awareness and influence policy are also NGOs."

An NGO is

- a non-profit making, voluntary, service-oriented/development oriented organisation, either for the benefit of members (a grassroots organisation) or of other members of the population (an agency).

- it is an organisation of private individuals who believe in certain basic social principles and who structure their activities to bring about development to communities that they are servicing.

- social development organisation assisting in empowerment of people.

- an organisation or group of people working independent of any external control with specific objectives and aims to fulfil tasks that are oriented to bring about desirable change in a given community or area or situation.

- an organisation not affiliated to political parties, generally engaged in working for aid, development and welfare of the community.

- Organisation committed to the root causes of the problems trying to better the quality of life especially for the poor, the oppressed, the marginalized in urban and rural areas.

- Organisations established by and for the community without or with little intervention from the government; they are not only a charity organisation, but work on socio-economic-cultural activities.

- an organisation that is flexible and democratic in its organisation and attempts to serve the people without profit for itself[65].

2.1.2. Financial Action Task Force (FATF)

The FATF does not define either Civil Society or Non-Governmental Organisations, but focuses on Non-profit Organisations. The FATF features for these organisations can be summarised as follows:

Non-profit Organisations can take on a variety of forms, depending on the jurisdiction and legal system. Within FATF members, law and practice recognise associations, foundations, fundraising committees, community service organisations, corporations of public interest, limited companies, Public Benevolent Institutions, all as legitimate forms of non-profit organisation, just to name a few. This variety of legal forms, as well as the adoption of a risk-based approach to the problem, militates in favour of a functional, rather than a legalistic definition. Accordingly, the FATF has developed suggested practices that would best aid authorities to protect non-profit organisations that engage in raising or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works" from being misused or exploited by the financiers of terrorism[66].

2.1.3. Organisation for Economic Co-operation and Development (OECD)

According to the Organisation for Economic Cooperation and Development (OECD), "NGOs include profit-making organisations, foundations, educational institutions, churches and other religious groups and missions, medical

[64] UN, ECOSOC 1996/31, n. 1-17.

[65] http://www.undp.org/ppp/library/files/maslyu01.html.

[66] FATF, Best Practices, p. 3.

organisations and hospitals, unions and professional organisations, cooperatives and cultural groups as well as voluntary agencies."[67]

2.1.4. Council of Europe (CoE)

The "Fundamental Principles on the Status of Non-Governmental Organisations in Europe" introduce the following definition for NGOs:

- NGOs are essentially voluntary self-governing bodies and are not therefore subject to direction by public authorities. The terms used to describe them in national law may vary, but they include associations, charities, foundations, funds, non-profit corporations, societies and trusts. They do not include bodies which act as political parties.

- NGOs encompass bodies established by individual persons (natural and legal) and groups of such persons. They may be national or international in their composition and sphere of operation.

- NGOs are usually organisations which have a membership but this is not necessarily the case;

- NGOs do not have the primary aim of making a profit. They do not distribute profits arising from their activities to their members or founders, but use them for the pursuit of their objectives.

- NGOs can be either informal bodies or organisations which have legal personality. They may enjoy different statuses under national law in order to reflect differences in the financial or other benefits which they are accorded in addition to legal personality[68].

2.1.5. European Union (EU)

The European Union defines Civil Society and Non-governmental organisations

(a) Civil Society

(i) European Commission

The European Commission tries to define Civil Society with the following approach:

Problems can arise because there is no commonly accepted - let alone legal - definition of the term "civil society organisation". It can nevertheless be used as shorthand to refer to a range of organisations which include:

- the labour-market players (i.e. trade unions and employers federations – the "social partners");

- organisations representing social and economic players, which are not social partners in the strict sense of the term (for instance, consumer organisations);

- NGOs (non-governmental organisations), which bring people together in a common cause, such as environmental organisations, human rights organisations, charitable organisations, educational and training organisations, etc.;

- CBOs (community-based organisations), i.e. organisations set up within society at grassroots level which pursue member-oriented objectives, e.g. youth organisations, family associations and all organisations through which citizens participate in local and municipal life;

- religious communities

So "civil society organisations" are the principal structures of society outside of government and public administration, including economic operators not generally considered to be "third sector" or NGOs. The term has the benefit of being inclusive and demonstrates that the concept of these organisations is deeply rooted in the democratic traditions of the Member Sates of the Union[69].

Some years ago, in its communication on "Promoting the role of voluntary organisations"[70], the European Commission tried to give a definition for voluntary organisations in spite of recognising the difficulties in delimiting the sector. It states that voluntary organisations are, at their most basic, simply groups of people who have come together for some purpose or other. Despite the variety of the organisations included in this sector, there is an agreement on the following features shared by all voluntary organisations:

- they are distinguished from informal or purely social or familial groupings by some degree, however vestigial, of formal or institutional existence

[67] Organisation for Economic Co-operation and Development, Voluntary Aid for Development: The Role of Non-Governmental Organisations 14 (1988). http://www.globalpolicy.org/ngos/role/intro/def/2000/chaleng.htm.

[68] CoE, Status NGO, n. 1-5.

[69] COM (2002) 704, p. 6.

[70] COM (1997), 241.

- they are non-profit distributing, that is to say they have purposes other than to reap profits for their management or members

- they are independent, in particular, of government and other public authorities, that is to say free to govern themselves without interference according to their rules and procedures

- they must be managed in a what is sometimes called "disinterested" manner. The use of this term is meant to indicate not just that voluntary organisations must not themselves be profit-seeking, but also that those who manage them ought not to do so in the hope of personal gain

- they must be active to some degree in the public arena and their activity must be aimed, at least in part, at contributing to the public good.

Political parties and religious congregations as well as trade unions and employers' organisations have been consciously excluded from this sector[71].

(ii) European Economic and Social Committee

The European Economic and Social Committee defines the concept of "civil society organisations" as being "the sum of all organisational structures whose members have objectives and responsibilities that are of general interest and who also act as mediators between the public authorities and citizens".

This concept includes in particular all economic, social and occupational organisations, these being a fundamental component of organised civil society and governance within and beyond the borders of the EU. In many cases, they also play an increasingly important role in providing access to a number of collective goods or services (education, social protection, health etc.) as intermediaries between the public authorities (the State and its administration) and the marketplace[72].

(b) Associations

For the definition of Associations by the European Union, see section 4.1.2. on page 78.

(c) Non-Governmental Organisations

According to the understanding of the European Commission, the NGO-sector has often been described as extremely diverse, heterogeneous and populated by organisations with hugely varied goals, structure and motivations. It is therefore not an easy task to find a common definition of the term "non-governmental organisation". It cannot be based on a legal definition given the wide variations in laws relating to NGO activities, according to which an NGO may have, for instance, the legal status of a charity, non-profit association or a foundation. The term "NGO" can nevertheless be used as shorthand to refer to a range of organisations that normally share the following characteristics:

- NGOs are not created to generate personal profit. Although they may have paid employees and engage in revenue-generating activities, they do not distribute profits or surpluses to members or management.

- NGOs are voluntary. This means that they are formed voluntarily and that there is usually an element of voluntary participation in the organisation.

- NGOs are distinguished from informal or ad hoc groups by having some degree of formal or institutional existence. Usually, NGOs have formal statutes or other governing document setting out their mission, objectives and scope. They are accountable to their members and donors.

- NGOs are independent, in particular of government and other public authorities and of political parties or commercial organisations.

- NGOs are not self-serving in aims and related values. Their aim is to act in the public arena at large, on concerns and issues related to the well being of people, specific groups of people or society as a whole. They do not pursue the commercial or professional interests of their members[73].

2.2. Private Organisations

2.2.1. John Hopkins

The John Hopkins University Institute for Policy Studies defines "the non-profit sector" or the "civil society sector" descriptively and analytically as a collection of entities that share five crucial characteristics, i.e. which are:

- Organised, i.e., institutionalised to some extent: What is important is that the organisations have some institutional reality

[71] COM (1997) 241, p.1, 2.

[72] http://www.ces.eu.int/pages/en/acs/SCO/SCO_accueil_en.htm.

[73] COM (2000) 11, p. 3.

and internal organisational structure to it. This is typically signified by a legal charter of incorporation, but it can also be demonstrated in other ways in countries where legal incorporation is neither common nor readily available.

- Private, i.e., institutionally separate from government: Non-profit organisations are non-governmental in the sense of being structurally separate from the instrumentalities of government. This does not mean that they may not receive significant government support or even that government officials cannot sit on their boards.

- Non-profit-distributing, i.e., not returning profits generated to their owners or directors: Non-profit organisations may accumulate profits in a given year, but the profits must be reinvested into the basic mission of the agency, not distributed to the organisations' owners, members, founders or governing board. Non-profit organisations are private organisations that do not exist primarily to generate profits, either directly or indirectly, and that are not primarily guided by commercial goals and considerations.

- Self-governing, i.e., equipped to control their own activities: Non-profit organisations must be self-governing and in a position to control their own activities through internal governance procedures, and enjoy a meaningful degree of autonomy.

- Voluntary, i.e., involving some meaningful degree of voluntary participation: To be included in the non-profit sector, organisations must embody the concept of voluntarism to a meaningful extent[74].

To keep the project manageable, two types of non-profit organisations that are part of the non-profit sector, were excluded: religious/sacramental organisations and political parties. Accordingly, two additional criteria were added to the definition:

- Nonreligious, i.e., not primarily involved in the promotion of religious worship or religious education: This criterion excludes congregations, synagogues, mosques and churches, but leaves church-related and religiously affiliated organisations within the non-profit sector.

- Non-political, i.e., not primarily involved in promoting candidates for elected office: While this criterion excludes political parties, it preserves advocacy and civil rights and similar organisations as part of the non-profit sector.

[74] Salomon/Anheier, WP 22, p. 3, 4; Salomon/Anheier in Global Civil Society, p.3.

2.2.2. European NGOs Confederation for Relief and Development (CONCORD)

The European NGOs Confederation for Relief and Development (CONCORD) is formed by 18 international networks and 19 national associations from the European Member States and the candidate countries. They represent more than 1500 European NGOs vis-à-vis the European Institutions. CONCORD members are national associations, networks or families of NGOs, but no individual NGOs.

The overall criteria to become a member of CONCORD are:

- Be legally registered as a non-profit organisation with separate legal personality established in a Member State of the European Union or of EFTA or an accession country or be in the process of being registered

- Have a purpose and activity that focus on European development co-operation and/or humanitarian aid in development countries

- Agree with the objectives of the association as formulated

- Represent the NGO civil society sector

- Have a clear and democratic governance structure

- Have transparent accountability

There are specific criteria for the national organisations:

Only one national organisation representing the NGO community in a particular European country or accession country can acquire membership through the application and acceptance procedure set out in the Articles of Association and the Internal Rules.

Besides this, there are also specific criteria for networks or families:

Only network organisations that cumulatively fulfil the following criteria can acquire membership through the application and acceptance procedure set out in the Articles of Association and the Internal Rules:

- the secretariat of a network or a family shall be situated in a Member State of the European Union or of EFTA

- a network or family should have at least five member organisations from at least five Member States of the European Union

- the network of a family and at least five of its members should have been in existence for at least three years

Membership can be granted through an application procedure as set out in the Internal Rules. Acceptance of new members will be granted by the General Assembly by a simple majority[75].

2.2.3. Eurofestation 2004

The Invitational Conference on 'Policies, Partnerships and Participation' (Eurofestation 2004) in MECC, Maastricht was organised by the Netherlands Association of Municipalities (VNG) and CIVIQ (the Dutch Volunteer Centre), under the auspices of the Dutch Ministry of Health, Welfare and Sport (VWS). It addressed stakeholders in volunteering from the public, private and volunteering sector. Eurofestation 2004 has produced a "Roadmap to 2010" to outline the further development of volunteering policy in the EU. Therefore research was conducted in all 25 member states of the EU.

As one result of the research on volunteering policies in the EU member states, it was tried to find a common definition for volunteering. But as not all member states do have a formal definition of this term, there could only be resumed three common dimensions of this term in most of the member states. Accordingly, volunteering is not obligatory, it is unpaid work and it is for the benefit of others, not the volunteers[76].

2.2.4. European Foundations Centre

For the definition of Foundations by the European Foundations Centre see 4.2 on page 79.

2.2.5. Reasoning

As it can be seen above, there is a variety of definitions used by diverse international organisations. They differ not only in the type of entities they define but also the definitions for one type of entity vary from one organisation to another.

It seems to be the general idea in international law that every organisation establishes its own definitions concerning the non-profit sector with regard to its particular context. It may be called functional approach to the lack of a common definition in international law[77].

This means that all the definitions given by international organisations or institutions cannot be more than an idea on the complexity and diversity of the non-profit sector. For a more detailed solution to the lack of a common definition, it is necessary to further examine the non-profit sector comprising of different legal forms of entities.

2.2.6. Table on definitions in the international law for non-profit sector

Table 1. Definitions in international law for the non-profit sector

Institution		Civil Society	NGO	NPO	Association	Foundation	NGO for Development	Volunteering
UN	UN	x	x					
	ECOSOC		x					
	World Bank		x					
FATF				x				
OECD			x					
Council of Europe			x					
EU	European Commission	x	x		x			
	European Economic and Social Committee	x						
John Hopkins Center Civil Society Studies		x		x				
CONCORD							x	
Eurofestation 2004								x
European Foundation Centre						x		

3. Definitions in the national laws of EU15 for different types of entities

Despite the diversity, there seems to be one common fundamental idea: even if there is no common definition of non-governmental organisations, non-profit organisations or civil society, all entities active in the non-profit sector base their activity on one fundamental right: the "guarantee of freedom of association", as this fundamental right is generally extensively interpreted.[74]

[75] http://www.concordeurope.com

[76] Eurofestation, p. 2; Civiq, p. 14, 15.

[77] Lindblom, p. 52 f.

The freedom of association is guaranteed particularly in Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights, Article 11 of the European Convention of Human Rights. Furthermore, the Treaty establishing a Constitution for Europe recognises the freedom of association as a fundamental right in Article II-72. Moreover, the freedom to create an association is recognised in all Member States, even if the forms used for their constitution vary greatly from one country to another.[75]

Besides the different interpretations of these guarantees in their core meaning, there is the need to define the term "association". Therefore it has to be stressed, that national provisions cannot be conclusive in determining whether something is or is not an association for the purpose of guarantees such as that in Article 11 of the European Convention of Human Rights. Rather any classification by national laws has to be regarded as having "relative value and constitutes no more than a starting point"[76] in the search for defining this term of international law.

Nevertheless the limited impact on interpreting the international law's guarantees of freedom of association, the national laws on the different types of entities characterise the non–profit sector in the member states. Therefore it is not possible to show a complete picture of the sector without taking into consideration also these definitions.

All national legislation can be found in the Annex.

3.1. Association

Associations are the basic legal form for the grouping of persons to pursue a common aim in most member states. They are generally member based bodies[78].

3.1.1. Austria

An association in accordance with Art 1 Law on associations "Bundesgesetz über Vereine" (VerG)[79] is an entity created voluntarily by at least two persons to reach a specified, common and lasting idealistic purpose. It does not include entities which have to be formed according to other laws.

The association may not conduct its activity to make profit. All the assets have to be spent on the purpose.

It has to have the legal seat in Austria and a specific name, different from other associations or entities.

The association is established through the agreement of statutes (Art. 2.1 VerG).

The statutes must contain (Art. 3.2. VerG):

- the name of the association
- its registered office
- a clear and detailed description of its purpose
- the planned activities and means to realise the purpose
- rules about the acquisition and termination of membership
- rights and duties of the members
- the denomination of the organs as well as the detailed statement on the responsibilities
- the procedure of the appointment of the organs and their decision making
- rules governing the liquidation of the association and the use of the assets

An association gains legal personality with the statement of the competent authority to start operations, Art. 13.1, 2.1 VerG. Therefore an association has to transmit the name, date and place of birth and the address of the founder as well as the statutes to the authority (Art. 11 VerG).

It has to prohibit the association to start operations in case of suspicion of illegality.

There must at least two organs: the general meeting of the members and the board. There is the possibility to have a supervisory board. Every association has to have two auditors; big associations (see Art. 22.2. VerG) have to have a certified public accountant (Art. 5 VerG).

Profit making associations, political associations and religious entities are governed by special laws[80].

3.1.2. Belgium

In Belgium there are different types of associations.

[78] Fries, p. 229.

[79] All national legislation can be found in the Annex.

[80] http://www.ngo.at/recht.htm Feb. 28, 2005.

(a) Non-Profit Association

A non-profit association must have its legal seat in Belgium and is an entity that is not conducting industrial or commercial activities and is not aiming to distribute material profits to its members.

Associations have to have an administrative board consisting of at least 3 members. The board holds a list of all members, containing the names, first names and residence or, if it is a legal entity, the company name, the legal form and the address of the registered office.

There has to be a deposit at the clerk's office of the local commercial court at the legal seat of the association of the statutes, the acts relating to the appointment of the administrators and the register of members.

The statutes have to contain:

- the name, first names, residence, date and birthplace of each founder, or, if it is a legal entity, the company name, the legal form and the address of the registered office and the administrative structure
- the name and the registered office of the administration
- the minimum number of members (not less than three)
- the precise description of the aims
- the conditions for the admission and the exit of members
- the procedure of the convocation of the general assembly as well as of the publication of its regulations
- the procedure concerning the nominations, the revocation and functions of the board members, the representatives and the coordinators
- maximum amount of the contributions or the payments to be carried out by the members
- the destination of the patronage in the case of dissolution of the association
- the duration of the association (if it is not unlimited)

The register of the members must contain the names, first names and residence of the members or if it is a legal entity, the company name, the legal form and the address of the registered office.

Associations for public utility gain legal personality with the deposit at the commercial court. They are entitled to gain this status unless their statutes do not contain all necessary requirements or their purpose contravenes the law or the public order, Art. 3 § 1, Art. 3bis Loi du 1921-06-27

The local commercial court holds a dossier of every association for public utility containing (Art. 26novies § 1 Loi du 1921-06-27)

- the statutes
- the relevant acts for the nomination and cessation of administrators, representatives, cooperatives and commissioners
- a copy of the register of members (held by the board)
- the decisions related to the nullification or dissolution
- the annual accounts

All these documents except the register of members and the annual accounts have to be published in the gazette ("Moniteur belge"), Art. 26 novies § 2 Loi du 1921-06-27.

(b) Factual Association

A factual association is an entity without legal personality, governed by Art. 1832 of the Civil Code. A factual association is an entity without legal personality governed by Art. 1832 of the Civil Code. It is formed by the conventional will of two or more persons who share a common purpose. The members of a factual association are individually responsible for any obligations assumed by the association.

(c) International Non-Profit Association

The main principles of the non-profit associations apply also to the international non-profit associations, but the latter have a specific regime. When the statutes of an association provide for international activities, it may apply to fall under this regime.

3.1.3. Denmark

Art 78 (1) of the Danish constitution guarantees the right to establish an association without former authorisation as long as the aim of the association is admissible.

(a) Commercial Association

Certain associations are governed by the General Foundations Act "Loi no 300 du 6 juin 1984 sur les fondations et certaines associations" (FEL).

The law governs trade unions, professional associations, associations to administer the interest of a specific group of persons and other associations with economic interest. The law is only applicable to associations with assets exceeding DKK 250,000 (ca. 34,000 Euro) a year (Art. 2 FEL).

Associations governed by the FEL have to set up statutes containing the name, the Danish commune of its registered office, the purpose, the names of the board members as well as the mode of their designation, the conditions of adhesion and dismissal of members, the rights and duties of the members, the modalities for annual accounting, the modalities for the dissolution as well as for the duration of the association (Art. 48 FEL). The statutes have to be sent to the local fiscal authority of the registered office (Art. 49 FEL).

(b) Non-Profit Association

Apart from this law there, is no specific legislation for the establishment of non-profit associations. It is common practice to establish an association by a written constitutional act and statutes. It is set up by a contract and it is by this act that it gains legal personality. There is no rule for the internal administration of an association; usually it has two organs, the general assembly and a board of directors[81].

3.1.4. Finland

An association is a contract by which several persons act together for the common realisation of a non-profit purpose.

To establish an association, a constitutional act has to be signed by at least three persons. Furthermore, associations need to establish rules of the associations containing (Section 8 Associations Act):

- the name of the association
- the municipality in Finland which shall be the domicile of the association
- the purpose and forms of activity of the association
- any obligation of the member to pay membership and other fees to the association
- the number of the minimum and maximum number of members of the executive committee and the auditors and their term of office
- the accounting period of the association
- the time for electing the executive committee and the auditors, adopting the annual accounts and deciding on discharging from liability of accounts
- the manner in which and the period within which a meeting of the association shall be convened
- the manner in which the assets of the association shall be used if the association is dissolved or terminated.

The purpose of an association has to be a non-profit purpose and cannot be military, contrary to the law or proper behaviour, Section 1, 3 Associations Act.

Associations may only practice trade or conduct other economic activity that has been provided for in its rules or that otherwise relates to the realisation of its purpose or that is to be deemed economically insignificant (Section 5 Associations Act).

Associations gain legal capacity with registration with the National Board of Patents and Registration (Section 6 Associations Act).

The registration is not mandatory; therefore there are registered and unregistered associations[82].

The association is administered by an executive committee, consisting of at least three members (Section 35 Associations Act).

The executive committee of the associations must keep a list of members, stating the full name and the domicile of each member (Section 11 Associations Act).

3.1.5. France

(a) Non-Profit Association

An association is the agreement of two or several persons to work with their common knowledge and activities in a permanent manner to reach an aim other than to share profits. Any association created for an illegal cause or purpose, contrary to the law, morality, or for the purpose of threatening the integrity of the national territory or the republican form of government, is not valid.

The association can generally be set up without any authorisation or prior registration being required. But they only gain legal capacity and legal personality by filling a statement to the local

[81] Alfandari/Nardone, p. 81, n. 1500, 1515.

[82] Helander/Sundback in JH Working Paper Finland, p. 9.

representative of the central government "Préfecture de Département" (where the head office is located) and publishing it in the official journal "Journal Officiel". Thereby they receive the status 'declared association'. The statement has to contain the name and the object of the association, the registered office, the names, professions and nationalities of the persons in charge with the association's administration and direction as well as the statutes. At the end of the registration process the Prefect issues a receipt certifying the registration of the association. This receipt however does not further constitute an affirmation of the legitimacy of the association and its statutes.

Declared associations do not require special authorization to have recourse to justice, to receive individual donations and donations from recognized charities *(however they do need special administrative recognition to receive bequests and legacies)*, to qualify for subsidies from the central and local government or their respective agencies, as well as to acquire, possess and manage:

- Membership fees
- The premises used for the administration of the association and the assembly of its members
- Real estate as is strictly necessary for pursuing the association's stated purpose

The statutes of the association can be drafted with complete freedom. Its assets cannot be used for objectives other than those stated in its statutes.

(b) Non-Profit Association entitled to Special Governmental Recognition

Non-profit associations governed by the Associations Act (Loi du 1 juillet 1901) may be entitled to special governmental recognition in the following cases:

(i) Registered Non-Profit Association with aid, charitable or research purpose

The registered non-profit associations where the sole purpose is to provide aid or charity or to support scientific and medical research are governed by Art 6 Loi du 1 juillet 1901.

Associations that genuinely engage exclusively in such activities may be entitled to recognition as such by the public authority. Therefore they have to submit a request for permission to accept donations, bequests and legacies or a request for special tax status.

To be eligible for the recognition, the statutes of the association have to contain the following provisions:

- the association submits its books and accounting documents with regard to the use of the donations that it is required to collect at the request of the Minister of Interior or the Prefect
- the association fills an annual report on its financial situation and accounts, as well as those of its local branches with the Prefect
- the permit for delegates of ministers concerned to inspect the association and to report on its operation

The recognition holds for five years as long as the association meets the respective legal requirements.

(ii) Worship Association

Worship associations are governed by the Act of 9 December 1905 on the separation of Church and State. Associations with the sole purpose of worship may request permission to accept donations, bequests and legacies or request special tax status. To be granted the permission the association has to meet the following requirements:

- practice of worship
- its sole purpose is worship
- respect of the public order

The recognition holds for five years as long as the association meets the respective legal requirements.

(iii) Non-Profit Association with Recognised Public Benefit Purpose

The non-profit associations with recognised public benefit purpose "associations reconnues d'utilité publique" are ruled by Art. 10 Loi du 1 juillet 1901.

Associations can be recognised as fo r public benefit by a Decree of the "Conseil d'Etat".

They have to meet the following requirements:

- The purpose of the association must be in the general interest or public benefit; meaning it has to be distinct from the specific interest of its members.

- The purpose has to be philanthropic, social, sanitary, educational, scientific or cultural or the advancement of the international solidarity, of the environment, the quality of life and the protection of the sites and monuments.

- The association has to complete a probationary period of operation of three years as a declared association; the probationary period may be waived if the resources of the association are likely to ensure its financial equilibrium for the following three years.

- The association must submit material proof of its financial soundness and financial resources proportionate to its purpose. The budget for the last three years must show a positive balance and must reflect a real level of activity (e.g. a minimum annual budget of 46,000 Euro).

- The number of members is set at a minimum of 200 and must be in line with the objectives.

- The associations activities are not restricted to the local area.

- The statutes have to be in conformity with the model statutes approved by the "Conseil d'Etat"[83] containing:

  The name, object, duration and registered seat of the association

  The rules of organisation and procedure

  The conditions for the admission of members

  The commitments for submitting the relevant information to the prefecture

  The procedure in the case of the dissolution (Art. 11 Décret du 16 août 1901)

It has legal capacity for conducting all kinds of businesses allowed by its statutes; this includes the right to receive donations in the form of bequests and legacies. But the entities cannot acquire or possess real estate property except those necessary for the realisation of the purpose (Art. 11 Loi du 1 juillet 1901).

The Decree and the statutes of the association are published in the official journal ("Journal Officiel").

3.1.6. Germany

Associations are the corporate union of several natural or legal persons to pursue a common purpose. The union has to be voluntary and exist for any length of time. Political parties are not considered as associations under the associations act.

The association is prohibited if the purpose runs counter to the penalty law, the constitutional order or the international understanding, §§ 1 ff VereinsG.

To set up an association (§§ 21 – 79 BGB), the entity has to have statutes containing the constitution of the association. It needs a board of directors and a general meeting of the members as organs.

As it is not obligatory for associations to register, there are registered and unregistered associations.

Non-profit associations gain legal capacity by registering with the local civil courts (§§ 21, 55 BGB).

They have to fulfill the following registration requirements:

- there have to be at least seven members

- the statutes have to contain the name, purpose and registered seat of the association rules for the admission/discharge of members, the contributions of the members, the formation of the board and the procedures for the general assembly and have to be filed with the register authority

- the documents of the admission of the board member has to be filed with the register authority

The register entry has to be published with the bulletin of the court.

Economic working associations gain legal capacity by award by the state (§ 22 BGB).

3.1.7. Greece

The law differs between the so-called recognised associations and not-recognised organisations (unions), Art. 12 of the constitution. Art. 78-106 Civil Code govern the recognised associations, Art. 107 Civil Code governs the not recognised associations.

(a) Recognised Association

A recognised association is the joint union of not less than twenty persons to pursue a non-profit aim. It obtains legal personality with the inscription to the associations register held by the

[83] See http://lesrapports.ladocumentationfrancaise.fr/BRP/014000054/0000.pdf, p. 89-95 for the model statutes.

regional civil court of its legal seat, Art. 78 Civil Code (legal notification).

The association is established by the deed of association. The Civil Code does not require a specific content of the deed. However, it should contain the general principles concerning the aim and the procedure of operation of the association[84].

The statutes must contain (Art. 80 Civil Code):

- the aim of the association
- the name and the registered seat of the association (it is enough to mention the town or the village, it is not necessary to give the detailed address)
- the previsions for the admission and the emission of members, their rights and duties
- the financial resources
- the mode of representation
- the conditions for the procedure of operation of the association, the convocation of the general assembly and its decision making process
- conditions for the modification of the statutes
- conditions for the dissolution of the association

The association has two organs: the general assembly and the governing board. The latter has to consist of at least three members; their names have to be mentioned in the statutes[85].

The aim of the association has to be a non-profit purpose, that is the sole purpose cannot be economic activity but activity for raising funds is allowed; the purpose can be in the field of sports, science, philanthropy, religion, amusement, profession and trade union, arts and culture[86].

Before registering the association, the court has to verify that the legal previsions are fulfilled, i.e. that the statutes contain the obligatory items, the purpose of the association is legal, conforming to the morality and the public order as well as that the statutes are signed by at least twenty persons holding legal capacity. It is a check of legality not of opportunity[87]. If all the conditions are fulfilled, the court has to register the associations, publish the registration in the official journal and give notice to the prefect. Furthermore, the basic elements of the statutes have to be published in the media (Art. 81 Civil Code).

An association can be dissolved in the cases provided in its statutes, in case the number of members is less than ten (Art. 104 Civil Code) or by court decision (Art. 105 Civil Code).

(b) Not-Recognised Association

A not recognised association is not established by legal notification but by a sole declaration of the founders (Art. 107 Civil Code). It is governed by the general provisions for unions/societies and does not posses legal personality. It can be turned into a non-profit association if the establishment requirements are met[88].

(c) Philanthropic Association

Philanthropic associations are governed by the Decree-Law 1111/1972. They have to work exclusively for the philanthropic purpose; associations that work only form time to time for philanthropic purposes, are not recognised as philanthropic associations.

A philanthropic aim is an activity that provides material or moral help to persons or group of persons in need (Art. 1 § 1 Law 1111/1972).

The law differs between associations that are recognised as specific and those which are not. The distinction is important for the concern of special advantages (Art. 19) and obligations (Art. 21, 22).

The philanthropic association has to establish a foundation in compliance with Art. 108 – 121 of the Civil Code (Art. 6 Law 1111/1972).

3.1.8. Ireland

(a) Association

There is no separate legal form for associations. They are often incorporated as companies limited by guarantee and therefore no initial share capital is inquired. (For more details see Foundations 3.2.8. on page 57).

(b) Unincorporated Association

Most NGOs in Ireland take this form. An unincorporated association is not a legal entity and its creation rests on an agreement, oral or written, between its members; usually its governing instrument is its constitution or rules. It

[84] Alfandari/Nardone, p. 218, n. 1510.

[85] Alfandari/Nardone, p. 230, n. 2065.

[86] Sousi/Mayaud, p. 133, n. 29; Alfandari/Nardone, p. 221 f, n. 1600.

[87] Alfandari/Nardone, p. 219, n. 1549, 1550; Sousi/Mayaud, p. 135, n. 37.

[88] Sousi/Mayaud, p. 135, n. 38; Alfandari/Nardone, p. 217, n. 1000.

has no legal personality and therefore no capacity, independent of its members, to enter into legal relations with other bodies or persons[89].

3.1.9. Italy

An association is the conglomeration of physical persons to pursue a social purpose not exclusively economical (e.g. sportive, cultural or political), whereas the personal element dominates.

It is established by public act (deed) that is verified by a notary (Art. 14 Civil Code). The content of this deed has to be the same as of the statutes. It must have statutes containing the name, legal seat, purpose, assets and rules of ordinance and administration (Art. 16 Civil Code).

Its purpose must be determinate (or determinable), not illicit and non-profit making.

Associations cannot work for altruistic aims.

The organs of an association are the board of directors and the general assembly.

Associations gain legal capacity by recognition and legal personality by registering with the competent authorities, Art 12 (1) Civil Code.

There are incorporated associations, that have requested and obtained state recognition due to the fulfilment of specific requirements and unincorporated associations. An incorporated association has certain privileges that do not apply to unincorporated associations. These include financial independence, the right to receive donations, legacies and bequests, the right to purchase property and the limited liability of the association's members.

3.1.10. Luxembourg

The freedom of association is guaranteed by Chapter II, Art. 26 of the Constitution. The law in Luxembourg distinguishes between non-profit making associations and public utility associations.

(a) Non-Profit Making Association

Non-profit making associations and foundations are governed by the law on the non-profit making associations and foundations of 21 April 1928 "Loi du 21 avril 1928 sur les associations et les fondations sans but lucratif, telle qu'elle a été modifiée par les lois des 22 février 1984 et 4 mars 1994 sur les associations et les fondations sans but lucrative"[90].

Non-profit making associations are entities that are not devoted to industrial or commercial operations, or which do not seek to provide material profit to its members, Art. 1 Loi du 21.04.1928.

However, the associations can pursue insignificant commercial or industrial activities. Apart from this definition and "e contrario" there is no other or more specific definition on the purpose or the activity of a non-profit association[91].

An association can only be established by the minimum of three associates; three out of five have to be of Luxembourg's nationality. The constitutional act of the association has to be on record with the "Conseil d'Etat"[92].

The registered seat has to be in Luxembourg.

Their statutes have to contain (Art. 2 Loi du 21.04.1928):

- the name and the registered seat of the association
- the object for which it was created
- the minimum number of associates (which cannot be less than 3)
- the names, professions, addresses and nationalities of the associates
- the conditions for the entry/exit of members
- the procedure of the convocation of the general assembly as well as of the publication of its resolutions
- the rules for the nomination of the board members
- the maximum rates of the members' contributions
- the rules for the drawing up of the accounts
- the procedure of modifying the statutes
- the application of the patrimony in the case of the dissolution

[89] http://www.usig.org/countryinfo/ireland.asp, 29 September 2005.

[90] http://www.legilux.public.lu/leg/a/archives/1994/0170403/0170403.pdf#page=2, 14 December 2004.

[91] Alfandari/Nardone, p. 305, n. 1620, p. 316 n. 5000.

[92] Alfandari/Nardone, p. 304, n. 1500.

The association has to have a board as administrative organ, consisting of at least three members. They can only own real estate if it is necessary for the pursuance of their purposes.

Non-profit making associations acquire legal personality with the publication of their statutes and a list containing the identity of the administrators in the "Mémorial", the official gazette of Luxembourg, Art. 3 Loi du 21.04.1928.

According to Art. 10 Loi du 21.04.1928, a list of the association's members (containing identity, nationality and residence) has to be deposited at the office of the local civil court of its registered seat and has to be updated every year.

(b) Public utility association

Non-profit making associations that pursue an aim of general interest can be recognised as public utility associations via Gran-Ducal Decree of the Ministry of Justice, after the file of the association was certified by the "Conseil d'Etat". Therefore they have to pursue an humanitarian, social, religious, scientific, artistic or pedagogic purpose or an aim related to sports or in the field of tourism.

3.1.11. The Netherlands

An association as defined in Book 2 Art.26 (2:26) of the Dutch Civil Code "Burgerlijk Wetboek" is a partnership between two or more people (members) who wish to realise a certain objective. An association is allowed to make a profit, but the profit must be used for the common goal. The objective must not be to disturb law and order or to challenge public morality. Profits may not be distributed amongst the members. Associations have two organs: the general assembly and the governing board.

Associations can be established by a notary deed but it is not obligatory.

In case they are established by notary deed the association (the so called "formal associations") has to lay down its statutes in this deed in the Dutch language, Art. 2:27 Civil Code. The statutes have to contain (Art. 2:27.4 Civil Code):

- the name of the associations and the commune in the Netherlands where it has its registered office
- the aim of the association
- the obligations of the members compared to the association as well as the procedure of imposing such obligations
- the manner of convenience notice for the meeting of the general assembly
- the rules for the appointment and the dismissal of the board members
- the destination of the assets in case of the dissolution

In case they are not established by notary deed, the general assembly can decide to lay down the statutes in a notary act, Art. 2:28.1 Civil Code.

Associations enjoy legal personality (Art. 2:3 Civil Code).

The General Assembly appoints the governing board amongst the members of the association if the statutes do not make other arrangements, Art. 2:37 Civil Code.

The governing board represents the association (Art. 2:45.1 Civil Code) and compiles the annual report on the course of business and the pursued policy (Art. 2:48.1 Civil Code).

Furthermore, it has to draw up annual accounts that are allowed by the general assembly, Art. 2:49 Civil Code.

Every association has to prepare annual accounts if it qualifies for tax privileges. Associations with business activities and a net annual turnover in excess of six million guilders (more than 2.722.681 Euro) in two consecutive accounting years have to submit their annual accounts to the Chamber of Commerce ("Kamer van Koohandel") for inspection where anyone may consult these accounts[93].

3.1.12. Portugal

The Portuguese law differs between private law associations, non recognised associations and associations recognised for public benefit.

(a) Private law Associations

The freedom of association is guaranteed in Art. 46 of the Constitution.

Associations governed by the Civil Code have to be non-profit making (Art. 157 Civil Code) and need an organisational structure with administrative body, a statutory audit committee as well as a general assembly (Art. 162, 170 Civil Code)

To establish an association, the constituting act and the statutes have to be send to a notary who

[93] http://www.kvk.nl/artikel/artikel.asp?artikelID=16057 &sectieID=102, 8 March 2005.

publishes it with the administrative authority as well as the Public Prosecution Office and who sends an extract to the official gazette, Art. 158.1., 168.2. Civil Code.

The constituting act has to contain (Art. 167.1. Civil Code):

- the name
- the registered seat
- administrative rules
- the duration of the association in case it was established for a limited period of time
- the objectives/services that the associates carry out for the patrimony

The statutes have to contain (Art. 167.2. Civil Code):

- the rights and duties of the associates
- the procedure of their admission, dismissal and exclusion
- the terms of the dissolution of the association and the destination of its patrimony in this case

The Public Prosecution Office verifies the legality of the documents and may propose modifications.

Associations have legal capacity according to art 160.1. CC.

They gain legal personality according to art. 158.1 CC by publishing the constituting act and the statutes in the official gazette.

The purpose of the association may not be unrealizable in legal or material terms, illicit or against the public order or the morality, Art. 280 Civil Code. Furthermore, it is already excluded by definition to pursue any profit aim; but additionally economic activity is allowed as long as the gained profit is spent on the social aim[94].

(b) Not recognised associations

Besides, there are the not recognised associations without legal personality governed by Art. 196 to 198 Civil Code.

(c) Associations recognised for public utility

Private law associations as well as private law foundations can be recognised for public utility under the criteria set up by Decree Law 460/77.

For being recognised as public utility foundation or association, the entity must fulfil the functioning conditions set up by Art 2 Law 460/77:

- not limit the possibility of being associate or beneficiary to certain persons
- stick to the equality guaranteed by Art. 13. 2 of the Constitution
- be conscious of their public utility as well as promote and develop it and work in
- cooperation with the administration
- promote activities of general interest, if the entity is only working for the benefit of the associates
- work for one of the following purposes (Art. 4 Law 460/77):

  purposes set out in Art. 416 of the Administrative Code

  or have been working for not less than five years in an effective and relevant way

The competent authority for the declaration is the government, Art. 3 Law 460/77.

The entity seeking recognition has to submit all the relevant documents to the Prime Minister (Art. 5 Law 460/77); the declaration is published in the "Diário da República", Art. 6.2. Law 460/77.

The foundations and associations recognised for public utility are registered in a special register hold by the notary, Art. 8 Law 460/77.

3.1.13. Spain

(a) Associations

Associations are governed by the Associations Act of 24 December 1964 "Ley 191/1964, de 24 de diciembre, de asociaciones"[95].

Associations are established by the deed of association, that has to be submitted to the registration authority. It has to contain[96]:

[94] Alfandari/Nardone, p. 365, n. 1600.

[95] http://civil.udg.es/normacivil/estatal/persona/PJ/L191-64.htm, 23 November 2004.

[96] http://www.mir.es/pciudada/asociaci/asociaci.htm#inscri, 29 November 2004.

- the name of the promoters if they are physical people, the denomination or trade name if they are legal persons and, in both cases, the nationality, the address and the number of fiscal identification.

- the declared intention to establish an association

- the denomination of the association

- the statutes

- date and location of the signing by the representatives

- identification of the persons who form the board

They are entities that do not have an illicit purpose and are not constituted in accordance with Civil or Commercial Law, set up according to the Canonical Law, associations of civil servants or any other association regulated by special laws.

They have to express in their statutes the will to pursue the common aim of several natural persons.

The statutes have to contain:

- the denomination

- the purpose set up by the founder members

- registered seat

- territorial field of activity

- the board and the form of administration

- procedure of admission and loss of partnership

- rights and duties of the partners

- patrimony and economic resources

- dedication of the properties to social purposes in the case of dissolution

The organs of an association are the general assembly and the board of directors.

They have to keep a list of all associates containing their names, profession and address. According to Art. 3 paragraph 6, entities that meet these requirements have a right to be recognised as associations.

(b) Association for Public Utility

Associations can apply for the declaration as "public utility" if they meet the criteria set up in the Law on Public Utility Entities of 22 March 2002 "Ley organica 1/2002, de 22 de marzo, reguladora del derecho de asociacion"[97].

Therefore they have to work for

- civic educational, scientific, cultural, sports, health or nature purposes

- the promotion of the constitutional values or human rights

- the promotion of social assistance, of development cooperation

- the promotion of the rights of women

- the promotion and protection of the family, protection of infancy

- the promotion of equal opportunities and of tolerance

- the protection of the environment

- the promotion of the social economy or research

- the promotion of the social voluntary sector

- any other similar purpose

The activity cannot be restricted exclusively to benefit its associates, but has to be open to any other possible beneficiary.

The board and administration are not paid out of the funds of the association.

The organisation has to count on the average personal and suitable materials and on the suitable administration to guarantee the fulfilment of the statutory aims.

The associations need to have existed for at least two years.

3.1.14. Sweden

(a) Association

A common legal definition of an association is lacking in Swedish law.

An association is created when a number of individuals (or legal entities) join to cooperate for a common purpose under organised forms and for

[97] http://www.mir.es/derecho/lo/lo_12002.htm#art32, 29 November 2004.

a certain period of time. The "ideell förening", the private non-profit association, is not defined in existing law. The "ideell" association is viewed as a more or less residual category consisting of all associations other than economic associations. Any association that fails to meet the criteria of conducting a business activity for the economic benefit of its members is automatically defined as an "ideell" association. In actual legal practice, however, an "ideell" association is treated, either by legal analogy to the legislation on economic associations or by reference to general legal principles[98].

There are five different types of associations: recreational or service associations; associations with social or ideological objectives; economic or cooperative associations; business associations; and labour-market associations.

The most common organisation among recreational associations are sports-related. Others include people engaged in hobbies such as philately, model railways, or the preservation and management of rural or community centres. There are also societies devoted to the promotion of the arts, of science, or for outdoor activities, including scouting, boating, and tourism. The Swedish Touring Club, "Svenska Turistföreningen", is one example.

Usually, the Swedish term "förening" indicates a group that is open and accessible to any interested individuals. By contrast, terms such as "klubb" (club), "sällskap" (society), "orden" (order), or "broderskap" (fraternity) often signal a more closed form of association. However, the names used by a particular organisation depend, for the most part, on the period in which the association was created, the type of activity in which the association is engaged, or the international organisation that served as the organisational model. Many international service organisations, such as the Rotary, Masonic Order, Odd Fellows, and Lions Clubs are found in Sweden. Social clubs, formed in schools or universities, or among groups of friends or employees, constitute another example of this type of association. Different minority organisations, among them associations for Finnish immigrants, or the Sami people, are also included in this grouping.

Associations serving a social mission or presenting an ideological message include groups formed for the preservation and protection of the environment, such as the Society for Nature Preservation, "Naturskyddsföreningen", and Greenpeace Sweden; ones organised to support the national defence, such as the Central Federation for Voluntary Military Training ("Centralförbundet för Frivillig Befälsutbildning"); and those representing the interests of the disabled and handicapped, such as the Association of the Visually Impaired and Stockholm Independent Living-STIL. Others advocate a sober life; raise funds for research and education; provide relief and development assistance to the Third World; champion human rights; or work to further the domestic welfare. Organisations such as the Swedish Red Cross, Save the Children, Amnesty International, the Salvation Army, and also political parties and religious congregations fall into this grouping of associations.

A third type of association is devoted to various forms of economic cooperation, and includes different types of business associations. The older forms--common ownership and the village community--are often centred on some form of real property, such as a common ground or road. The traditional Swedish cooperative movement is dominated by large, well-established consumer and producer cooperatives and is highly visible at home, but also recognised abroad. Savings-banks, cooperative banks, mortgage associations, and mutual insurance companies are distinguished from other financial service institutions both by their special legal status and by their cooperative form of organisation. Some of them are major actors in the Swedish banking industry. The turnover of the six huge cooperative business groups together represents a substantial part of the Swedish gross national product (LRF, 1993; KOOPI, 1993).

A newly-emerging type of cooperative, labelled "nykooperation" (neo-cooperatives), consists of smaller organisations that usually operate on a local scale. Neo-cooperatives emerged in response to new market demands and declining confidence in the ability of the public sector to provide the bulk of social services. Well-known examples are the cooperative child care centres, established and run by parents. Others are cooperatives among disabled people, artists, and craftsmen.

Trade unions and employer associations are the two large groups of labour market associations. They both use the word "förening", denoting organisations formed to defend their interests on the local or trade level. Labour unions are based on personal membership, although they also include federations of associations, such as national trade unions. By contrast, the members of employer associations are both trade and national level companies. "Gille" or "skrå" (guild or craft) are ancient terms for associations of craftsmen of a particular profession or trade. By nature, these associations belong somewhere between the trade union and the trade association.

[98] Lundström Tommy/ Wijkström Filip in JH Working Paper, Sweden, p. 13 f.

They were dissolved in 1846 by anti-trust legislation, but some of their basic features are found today among professional organisations (Hemström, 1992; Nial, 1988)[99].

(b) Association for General Benefit

Associations for general benefit "Ideella föreningar" are governed by the Income Tax Act "Incomstskattelag (1999:1229)"[100].

According to chapter 7, §§ 7-14 Income Tax Law Act, to be recognised as an association for general benefit, entities have to meet the following requirements:

- The purpose has to be for the general benefit; purposes recognised as general benefit are e.g. scientific, religious, charitable, social, political, athletic, and artistic or in some other way cultural purposes.
- The entity has to conduct the work exclusively (90 per cent or more) for this purpose.
- Furthermore it has to use almost its entire current yield (at least 75-80 per cent) for activities which are in accordance with the purpose.
- The organisation has to be open to everyone to become a member (with some exceptions) if the person agrees with the purpose of the association.
- The purpose cannot be restricted to certain families, members or other person's economic interests.
- The entity has to prove its reasonable money spending over several years.

3.1.15. United Kingdom

(a) Association

There is no separate legal form for associations but they can take the form of any incorporated or unincorporated organisation.

(b) Voluntary Association

A voluntary association is defined as a body formed by two or more persons to pursue a common purpose. The association may not work for its personal profit and has to pursue an aim of public interest. Voluntary associations can be formed by legal entities such as Friendly Societies, Industrial and Provident Societies or Charities. Only entities working for profit are excluded[101].

As for the diversity of the entities included in this category, the voluntary associations are not subject to specific regulations. There is no general requirement for them to seek authorisation or to register. But there are minimum requirements concerning the content of their statutes[102]:

- name and registered seat of the association
- purpose and assets
- conditions for the admission and the dismissal of the members
- rules for the establishment of directing bodies
- modalities for the functioning of the general assembly
- modalities for the functioning of the administrative bodies
- procedure for modifications of the statutes
- destination of the assets in case of dissolution of the association

3.2. Foundation

Foundations are generally described as capital based bodies without members. They are formed by committing resources generally in the form of capital sum to a specified purpose[103].

3.2.1. Austria

There are two types of foundations in Austria:

- private foundation: it is a legal entity that received assets dedicated to the pursuit of purposes specified by the founder (Art. 1.1 PStG).
- public benefit foundations: are legal entities established upon the irrevocable transfer of assets that are used for charitable or beneficial purposes (Art. 2.1 BSFG)[104].

(a) Private foundations

[99] Lundström Tommy/ Wijkström Filip in JH Working Paper, Sweden, p. 10, 11.

[100] http://62.95.69.15/cgi-bin/thw?${APPL}=SFST&${BASE}=SFST&${THWIDS}=1.39/27839&${HTML}=sfst_dok&${TRIPSHOW}=format=THW&${THWURLSAVE}=39/27839, 3 December 2004.

[101] Alfandari/Nardone, p. 446, n. 1010-1025.

[102] Alfandari/Nardone, p. 447, n. 1040, p. 448, n. 1045.

[103] Fries, p. 229.

[104] The laws on foundations of the federal states have not been considered.

Private foundations are governed by the Law on private foundations "Privatstiftungsgesetz" (PStG) have to have their legal seat in Austria.

They need to be established by a deed or through a will. In accordance with Art. 9.1 PStG, this document has to contain:

- the dedication of the assets to the foundation
- the purpose of the foundation
- the denomination of the beneficiary
- the name and the registered office of the foundation
- the name and the address of the founder; its birthday if it is a natural person resp. its
- company register number if it is a legal person
- the statement if the foundation is established for an indefinite time or not

Furthermore it may contain administrative rules and procedures.

The deed or will has to be certified by a notary (Art. 10, 39 PStG).

The minimum capital of 70,000 Euros is required (Art. 4 PStG). The assets are reviewed before registration if they are in a foreign currency (Art. 11 PStG).

No state approval is required but the private foundation must register with the company register at the local commercial court, Art. 7.1, 12, 13 PStG. Therefore it has to provide the following documents:

- the certified deed or will
- the certified statement of all board members that the assets are at their disposal
- the affirmation of a credit institution that the minimum capital has been deposited and is at the foundations disposal
- the affirmation of the revision of the minimum capital if required

A private foundation receives legal capacity by registration in the register of companies ("Firmenbuch").

Private foundations can pursue public benefit purposes as well as private purposes as long as the purposes are permitted. According to Art. 1.2 PStG all legal purposes are permitted except the purpose of conducting business activities as main activity. Furthermore, they must not run a separate business or be a personally liable partner in a company.

The governing structure of a foundation consists of the board (Art. 15 PStG) and the accountant ("Stiftungsprüfer"). A supervisory board of trustees ("Aufsichtsrat") is needed, if the foundation has more than 300 employees or governs a company with this size (Art. 22 PStG).

(b) Public Benefit Foundation

Public benefit foundations, governed by the Law on Federal Foundations and Funds "Bundesstiftungs- und Fondsgesetz" (BSFG) have to act in more than one province[105].

They are established by a private law deed dedicating assets irrevocably to a public benefit or beneficent purpose.

Public benefit purposes have to support the general public. Art. 2.2. BSFG in particular recognised as public benefit purposes the support of spiritual, cultural, moral, material and sporting aspects of the general public. Even a selected circle of individuals may be supported by the activities of the foundation.

A beneficial purpose is the support for people in need according to Art. 2.3. BSFG.

Public benefit foundations under the BSFG can conduct commercial activities as long as they fall within the objects of the foundation[106].

According to Art. 4 BSFG, the deed has to be written and has to contain:

- the will of the founder to dedicate specified assets for the establishment of the foundation
- the amount of the dedicated assets
- the public benefit or beneficent purpose

If the foundation is set up during the lifetime of the founder, the deed needs to be witnessed by court or notary and must be irrevocable. In case that it is set up by last will it has to follow the special formal regulations.

The deed has to be approved by the competent foundation authorities, Art. 5 BSFG. The authority has no discretionary power in giving the approval but has to provide it if the establishment

[105] Public benefit foundations acting in only one province are governed by special provincial legislation.

[106] EFC, country profile Austria, p. 2.

requirements are fulfilled, particularly if the deed adheres to the conditions of the BSFG and the dedicated assets is sufficient to fulfil the purpose. The approval has to be published in the official gazette "Amtsblatt zur Wiener Zeitung".

The public benefit foundation has to have the legal seat in Austria, Art. 9.1 BSFG.

The competent foundation authorities appoint a curator ("Stiftungskurator") to draft the statutes of the foundation within six months after the approval and to administer the foundation until the first governing structure (usually a board) has started its term of office after its appointment by the foundation authority, Art. 7, 11 BSFG.

According to Art. 10 BSFG the statutes must contain:

- the name and domicile of the foundation
- the dedicated assets and their use
- the beneficiaries
- the purpose
- the denomination of the organs as well as rules for their appointment and dismissal
- rules on yearly accounting
- rules for the case of the dissolution of the foundation.

The statutes as well as any modifications have to be authorised by the competent foundation authorities (Art. 10.4, 17.1 BSFG).

Appointments or resignations of the board have to be reported to the foundation authority within two weeks (Art. 15.4 BSFG). If management duties are not fulfilled properly, the foundation authority may interfere and ask for improvement. Should no improvement be noticed, the board might be dismissed and a commissioner appointed (Art. 16 BSFG).

The supervision authority decides about reimbursement of costs for the organs of the foundation (Art. 15.3 BSFG).

The public benefit foundation gains legal personality with the approval, Art. 5.4. BSFG.

3.2.2. Belgium

The Belgian law differs between private foundations and foundations for public utility. The Belgian law upto 31st December 2003 includes private foundations and foundations for public utility.

(a) Private Foundation

The common principles for both types:

According to Art. 27 Loi du 1921-06-27, the establishment of a foundation is the result of a legal act from one or several individuals or legal entities that dedicate capital for a specific aim. A foundation cannot procure profits on the founders, the administrators or other persons, unless it is about the realisation of the foundations purpose. A foundation has no members or associates.

It gains legal personality with the deposit of the statutes and of the nomination act of the administrators at the local office commercial court at the legal seat of the foundation.

The statutes of the foundation have to contain (Art. 28 Loi du 1921-06-27):

- the name, residence, date and place of birth of each founder or, if it is a legal entity, the company name, the legal form and the address of the registered office
- the name of the foundation
- the precise description of the purpose of the foundation as well as the activities that will be taken to reach it
- the address of the legal seat, which has to be in Belgium
- the procedure concerning the nomination, revocation and attributions of the administrators, the representatives and the coordinators as well as the complexity of their power
- the destination of the patronage in the case of the dissolution of the foundation
- the procedure to modify the statutes
- the settlement of conflict of interests

A foundation has to have a board of directors composed of at least three members (Art. 34 Loi du 1921-06-27)

The private foundation can be established without the intervention of public authorities.

(b) Foundation for Public Utility

A foundation can be accepted for "public utility" if it has a humanitarian, religious, scientific, artistic,

pedagogical, philosophical or cultural purpose. In this case the statutes have to be handed to the Ministry of Justice. The foundation for public utility gains legal personality with the recognition by royal decree (Art. 27.3, 31 § 2 Loi du 1921-06-27).

The Ministry of Justice holds a dossier for every foundation of public utility containing:

- the statutes and their modifications
- the acts of nomination, revocation and cessation of the administrators and the representatives
- the annual accounts
- in the case of the conversion of a private foundation to a public utility foundation, the related documents
- the decisions and acts related to the dissolution or liquidation of the foundation

All these documents except the annual accounts have to be published in the gazette ("Moniteur belge"), Art. 31 § 4 Loi du 1921-06-27.

3.2.3. Denmark

There are two laws governing the foundations in Denmark. The General Foundation Act covers non-profit foundations and certain associations (Lov om fonde og visse foreninger Nr. 300 af 6. juni 1984, FFL). Foundations that engage in commercial activities or hold controlling interest in a commercial company are regulated by the Act on Commercial Foundations (Lov om erhvervsdrivende fonde Nr.756 af 18. november 1991, EFL).

The term 'foundation' covers different legal entities as foundations, public corporations and legacies; Art. 1 FFL, Art. 1 EFL[107].

A foundation is generally defined as an endowment of assets that received legal personality and is managed by a board of directors[108].

(a) Non-Profit Foundation

A non-profit foundation can be established through a deed or a will. It has to be seated in Denmark. There must be assets irrevocably dedicated to the foundation and separated from the founder's assets, Art. 1 FFL.

The foundation has to pursue one or more specific purpose(s); it is managed by an administration independent from the founder and is an independent entity[109].

It receives legal personality at the time of its establishment. Within three months after its establishment the foundation must register with the local foundation authority (that is the Minister of Justice for non-commercial foundations, Art. 36 FFL and the Civilretsdirektorat on his behalf) and the local tax authorities both of which receive the statutes of the foundation as well as a list of board members. No governmental approval is needed to set up a foundation. (Art. 6.2, 11.2 FFL)

A starting capital of approximately 34,000 Euros (DKK 250.000) is required according to Art. 8 FFL. For foundations with smaller assets, the approval of the Ministry of Justice is needed.

According to Art. 6.1. FFL foundations need to have statutes with the following content:

- the name of the foundation
- its registered seat
- its purpose (in general it is satisfactory to name its 'general benefit purpose')
- the amount of assets and the parts of assets
- any special rights of the founder and third parties
- the number of the board members (at least three members are required according to Art. 11 FFL) and the rules for their designation
- the financial year and the accountability rules
- the appointment of the receipts

The statutes have to be sent to the Ministry of Justice and the local fiscal authority of its registered seat within three months of its establishment. In case the name of the founder is not mentioned in the statutes, it has to be added in an annex for the submitting, Art. 6.2. FEL.

The purpose of the foundation must comply with the law and be possible to achieve.

If they conduct economic activities as purpose, they are regulated by the EFL for commercial foundations. The establishment of foundations with the sole purpose of supporting the family of the founder is not allowed according to the

[107] Hansen in Hopt/Reuter, Denmark, p. 287 f.

[108] Alfandari/Nardone, p. 85, n. 4000.

[109] Alfandari/Nardone, p. 86, n. 4000.

constitution; even though relatives up to the next generation can be beneficiaries of the foundation (Art. 7 FFL and Art. 8 EFL).

In general, half of the governing board and the administrators must be resident in Denmark. The founder and his/her family cannot have the majority of the seats on the board[110].

The assets and the capital of the foundation have to be proportionate to the purpose, Art. 8 FEL.

(b) Commercial Foundation

A foundation is regarded as a commercial foundation if it is selling goods for money, generating services or selling/renting real estats. Furthermore, a foundation that is a dominating enterprise of an affiliated company is a commercial foundation, Art. 1.2 EFL.

A foundation that effectively conducts business activities only on a limited scale is not regarded as commercial foundation, Art. 1.3. EFL.

Commercial foundations must register with the Danish commerce authority, Art. 5 EFL. They only receive full legal capacity after registration. A starting capital of 40,000 euro is needed. The commercial foundation can only register when the assets are transferred[111].

3.2.4. Finland

Foundations are characterised as independent private law entities that are established by a deed or a written will by the founder describing the purpose and the property, Art. 3 (1) Foundations Act. The foundation needs permission by the National Board of Patents and Registration for its establishment[112].

The application for permission to establish a foundation shall be made to the National Board of Patents and Registration, which shall at the same time be requested to confirm the statutes.

The statutes have to contain (Article 4 Foundations Act):

- the name of the foundation, which shall contain the word 'foundation' and be clearly distinguishable from other foundations previously registered in the register of foundations
- the municipality where the registered office of the foundation shall be located
- the purpose of the foundation and the means of carrying out that purpose
- the property endowed on the foundation and how it is to be administered
- the number of the trustees and auditors of the foundation as well as their manner of appointment and term of office
- provisions on the signing of the name of the foundation
- the time when the annual accounts of the foundation are to be closed and the accounts and administration audited
- provisions on the amendment of the by-laws of the foundation and the termination of the foundation

The permission is usually granted for foundations with 'useful' purposes Art. 5 (3) Foundations Act; the application may not be granted if the purpose of the foundation is to carry on a business or if its main purpose is to bring financial gain to the founder or a functionary of the foundations. Likewise, the application shall be rejected if the property endowed on the foundation is below that provided for by decree or grossly disproportionate to the purpose of the foundation.

The statutes shall be approved if they have been drafted in compliance with the Foundations Act and if they are not against the law or proper behaviour, Art. 5 (3) Foundations Act.

A notice on the registration of a foundation shall be made within six months from the date of the permission of establishment was granted. If a foundation based on a deed does not make the notice within this period, the permission of establishment will lapse, Art. 6 Foundations Act.

A foundation cannot carry out any business that is not referred to in its by-laws, and which does not directly further its purpose.

According to Art. 9 Foundations Act, a foundation is administered by a board of trustees with a chairman and a minimum of two members.

3.2.5. France

The term foundation is legally protected and can only be used by those foundations that are public utility foundations (fondations reconnues d'utilité publique), corporate foundations (fondations d'entreprise) and non-autonomous foundations (fondations abritées) under the aegis of a few

[110] Alfandari/Nardone, p. 88, n. 4332; EFC, Country profile Denmark, p. 1.

[111] EFC, Country profile Denmark, p. 2; Hansen in Hopt/Reuter, Denmark, p.290.

[112] Helander/Sundback, JH working paper Finland, p. 11; EFC, Country Profile Finland, p. 1.

public utility foundations, for example the 'Fondation de France'[113].

(a) Public utility foundations

A foundation for public benefit is the legal act through which one or several natural or legal persons decide to assign assets, rights or resources irrevocably for a non-profit making activity of public interest.

Foundations have to be established by a deed and pursue a public benefit purpose. Private purpose foundations like family foundations are not allowed. They shall be non-profit making.

Foundations have to have statutes that are based on the model for a foundation statute of the Highest Court[114].

They can choose whether to opt for a supervisory board and an executive board ("Directoire et Conseil de Surveillance") or a governing board ("Conseil d'administration") as administrative structure.

They gain legal capacity with the recognition for public utility by a Decree of the "Conseil d'Etat", signed by the Prime Minister.

Foundations have to meet similar requirements to those for non-profit associations with a recognized public benefit purpose (see associations entitled to special governmental recognition under 3.1.5. (b) on page 43).

(b) Corporate Foundation

A corporate foundation can be formed by a civil or commercial company, a cooperative, a mutual society or a public entity of industrial or commercial nature. It has to be established for the realisation of an aim of general interest and has to be non-profit making. It is created for a determined duration, not less than five years. There has to be a board of directors as its administrative body. The statutes have to contain a multi-annual action plan with a fixed amount of money. The corporate foundation is not allowed to call on public generosity. It has to create annual balance sheets, profit and loss accounts, as well as an appendix which have to be audited.

The corporate foundation gains legal capacity with the publication of the administrative authorisation in the official journal, which confers it this status. But the corporate foundation cannot acquire or posses real estate property except those necessary for the realisation of the aim.

Furthermore it is not entitled to receive donations other than those from the staff of the founding entity or companies belonging to the same group.

3.2.6. Germany

(a) Federal Law §§ 80 – 88 Civil Code

There is no legal definition of foundation.

A foundation is established by a deed and the acknowledgment of the competent authority.

The deed can be a written statement or a will and has to set up the statutes of the foundation.

The statutes have to contain:

- the name
- registered seat
- purpose
- assets of the foundations
- rules on the setting up of the governing board

The deed has to be filed with the competent authority of the Federal State in which the foundation shall have its headquarters to gain the acknowledgment of legal capacity. This can only be refused if the purpose of the foundation compromises the common welfare or the effective fulfilment of the purpose does not seem to be assured.

Non-autonomous foundations without legal personality are called "nicht rechtsfähige" or "unselbständige Stiftung". Their establishment is subject to the general rules of contract law of the BGB[115].

Besides these regulations in the Civil Code, there are the regional foundation laws in the 16 federal "Länder", which differ from one another and make it impossible to determine the exact legal preconditions.

(b) Foundations in Bavaria

For establishing a foundation in Bavaria, there has to be the deed and the acknowledgment as postulated in §§ 80 ff BGB (federal law). The foundations are governed by the Foundations Act of Bavaria (BayStG).

[113] EFC, country profile France, p. 1

[114] http://www.interieur.gouv.fr/rubriques/b/b2_vos_demarches/b21_fiches/fondations/modele_statuts_F_CS_.doc, for the model statutes.

[115] EFC, Country profile Germany, p. 1.

Furthermore, the acceptance by the local administrative authority ("Bezirksregierung") is needed. This can only be refused if the purpose of the foundation is illicit or compromises the common welfare, if the effective fulfilment of the purpose seems not to be assured or any requirement for the construction of the a foundation is not fulfilled (Art. 5, 6 BayStG)

The acknowledgment has to be published in the official gazette ("Bayerischer Staatsanzeiger"). The publication has to contain the name, the legal status, the registered seat, the purpose, the organs, the representatives, the name of the founder, the date of establishment and the address of the foundation, Art. 7 BayStG.

The statutes have to contain the name, the registered seat, the legal status, the purpose, the assets and the organs of the foundation as well as provisions for the use of the return, Art. 9 BayStG.

The foundations have to register with the "Stiftungsverzeichnis" of the regional authorities for statistics ("Landesamt fuer Statistik") except for the foundations under church law, Art. 8 BayStG.

3.2.7. Greece

The foundations are regulated by Art. 109 of the Constitution and Art. 61, Art. 108 – 122 of the Civil Code. The Civil Code regulates the basic form known as (private law) foundation as well as any other form as long as there are no special rules.

The law differs between the private law foundations and the so-called non-autonomous foundations.

(a) Private Law Foundation

A foundation is the totality of means designated to the realisation of a specific, in most cases public benefit, purpose. It is a self-governing body without members. It has to be non-profit making as you can reason of a comparison with Art. 61 Civil Code[116].

Foundations are entities created by two legal acts, conforming to Art. 108 Civil Code: the founding act and the governmental decree.

The founding act is a unilateral declaration of the founder to manifest the will of creating a foundation and dedicating assets to the foundation to fulfil a certain purpose. It can be established by testament or "inter vivos", the latter has to be notified by a notary, Art 109 Civil Code. It has to specify the means of the foundation, the purpose and the (functional) organisation, Art. 110 § 1 Civil Code. It can only be recalled until the publication of the governmental decree, Art. 111 § 2 Civil Code and only for one of the reasons listed in Art. 111 § 1: subsequent poverty of the founder or important matter justifying the revocation.

The governmental decree of the competent authority approves the founding act and is published in the official journal, Art. 112 Civil Code. It is not only the control of legality (as for associations) but also of opportunity; it is a system of concessions. The competent authority is the particular minister respectively the purpose of the foundation; for the major part of foundations, the public benefit foundations, it is the Minister of Finance.

The foundation gains legal personality with publication of the governmental decree, Art. 108 Civil Code. The founding decree as well as a later issued decree can modify the statutes (Art. 110 § 2 Civil Code) but only if the will of the founder is respected.

The only organ of a foundation is the board of directors.

According to Art. 1 Law 2039/1939, a foundation realises a public utility purpose if it uses it means for conducting any aim serving the public benefit in general (in contrast to private purposes) as well as religious or charitable purposes. It is not necessary that the foundation conducts solely public utility purposes, but mainly. The purpose of a public benefit foundation can only be changed by court decision (Art. 109 Constitution).

A foundation can be dissolved in the cases stated in the statutes or by governmental decree in the cases stated in Art. 118 Civil Code: its aim is impossible to reach or is against the law, the morality or the public order.

(b) Non-Autonomous Foundation

Non-autonomous foundations are not governed by the Civil Code but by the legal rules on donations/gifts and inheritance. They do not have legal personality[117].

3.2.8. Ireland

There is no own legal form for foundations in Ireland and the form that any particular foundation should take is not prescribed in law. They are most likely to be companies limited by guarantee holding no capital share. This legal

[116] Sophia P. Tsakraklides in Schlüter/Then/Walkenhorst, Greece, p. 145; Leonidas N. Georgakopoulos in Hopt/Reuter, Greece, p. 361; Alfandari/Nardone, p. 236, n. 4020.

[117] Alfandari/Nardone, p. 237, n. 4040.

status is also the form recommended in the government's Green Paper[118].

The entities working as foundations in Ireland can be grant making, operating or community foundations[119].

A company is a legal form of business organisation. It is a separate legal entity and, therefore, is separate and distinct from those who run it.

As far as limited companies are concerned, the shareholders' liability is limited to the amount of shares they hold. Only the company can be sued for its obligations and can sue to enforce its rights.

There are four types of limited company, from which the company limited by guarantee not having a share capital is most likely to be established for setting up an association or foundation.

Therefore there must be a minimum of seven members. The members' liability is limited to the amount they have undertaken to contribute to the assets of the company, in the event it is wound up, not exceeding the amount specified in the memorandum. If a guarantee company does not have a share capital, the members are not required to buy any shares in the company. Many charitable and professional bodies find this form of company to be a suitable vehicle as they wish to secure the benefits of separate legal personality and of limited liability but do not require to raise funds from the members[120].

3.2.9. Italy

A foundation is an organised conglomeration, consisting of assets devoted to the realisation of an altruistic purpose defined by the founder, whereas the proprietary element dominates.

It is established by public act (deed) that is verified by a notary or by a will, Art. 14 Civil Code and has to have the same content as the statutes.

It must set up statutes containing the name, legal seat, purpose, assets and rules of ordinance and administration, Art. 16 Civil Code.

The foundation's purpose must be determinate (or determinable), not illicit and non-profit making.

Foundations have to work for public utility. Their only organ is the board of directors

Foundations gain legal capacity by recognition and legal personality by registering with the competent authorities, Art. 12 Civil Code. Foundations have to be incorporated.

3.2.10. Luxembourg

According to Art. 27 Loi du 21.04.1928, foundations are entities pursuing aims that are philanthropic, social, religious, scientific, artistic, pedagogic, related to sports, or in the field of tourism. A foundation must not pursue material gains. The purpose shall be pursued using the assets dedicated to the foundation.

Foundations in Luxembourg are "per definitionem" non-profit making and work for the public benefit.

The registered seat has to be in Luxembourg.

Foundations can only own real estate if it is necessary for the pursuance of public benefit purposes.

They need to have a board as administrative organ, consistent of at least three members.

To be established the foundation has to seek approval from the Ministry of Justice via Grand Ducal Decree, Art. 28 Loi du 21.04.1928. Therefore it has to file the authentic act or will and the statutes with the Ministry.

The statutes have to contain (Art 30 Loi du 21.04.1928):

- the object of the foundation
- its name and registered seat
- the name, professions, addresses and nationalities of the board members
- regulations regarding the appointment and conduct of the board members
- the destination of the assets in the case of the dissolution

Foundations acquire legal capacity when their statutes are approved by Grand Ducal Decree.

Having received the approval, the statutes have to be published in the "Mémorial", the official gazette of Luxembourg.

3.2.11. The Netherlands

(a) Foundation

[118] Donoghue in Schlüters/Then/Walkenhorst, Ireland, p. 156.

[119] Donoghue in Schlüter/Then/Walkenhorst, Ireland, p. 159.

[120] http://www.cro.ie/template_generic.asp?ID=3&Level1=1&Level2=1&Level3=0&Level4=0&Level5=0, 30 November 2004.

A foundation "stichting" is defined in Book 2 Art. 285.1 (2:285.1) of the Dutch Civil Code "Burgerlijk Wetboek" as a legal person created by a legal act which has no members and whose purpose is to realise an objective stated in its articles using capital allocated to such purpose.

The purpose must not consist of rendering services to the founder or to the members of the organs. Furthermore, rendering services to other persons is only allowed if the services realise an ideal or social aim (Art. 2:285.3 Civil Code). There are no further restrictions regarding the purpose. Foundations can be established for public and private purposes[121].

Foundations are established by deed or will, written in Dutch and certified by a notary. This act has to include the statutes, Art. 2:286 Civil Code.

The statutes have to contain (Art 2:286 paragraph 3, 4 Civil Code):

- the name of the foundation (including the word "stichting")
- the purpose
- the procedure of appointment and dismissal of the board members
- the comune in the Netherlands where it has its registered office
- the destination of the assets in case of its dissolution and the rules of decision taking on this matter

It is by this act that foundations gain legal personality according to Art. 2:3 Civil Code.

The foundation must give notice of the name, the surname, its address, the residence of the board members as well as the residence of the founders, a copy of the establishment certificate and a copy of the statutes to the local commercial register.

Registration must take place with the Chamber of Commerce. Furthermore, the competent tax authorities have to be notified of the establishment of the foundation and its' statutes must be sent to them.

According to Art. 2:291, 292 Civil Code, the foundation is ruled and legally represented by the governing board, responsible for the administration of the foundation.

There is no requirement for minimum original assets.

According to Art. 2:10 Civil Code the foundation must comply with certain book-keeping requirements which include the maintenance of accurate balance sheets, records of activities, related documents as well as annual accounts.

Every foundation has to prepare annual accounts to prove if it qualifies for tax privileges. Foundations with business activities and a net annual turnover in excess of six million guilders (more than 2.722.681 Euro) in two consecutive accounting years have to submit their annual accounts to the Chamber of Commerce ("Kamer van Koohandel") for inspection where anyone may consult these accounts. In this case there is also the need to obtain an audit certificate[122].

(b) Special Forms of Foundation

There are some special types of foundations regulated by special laws like foundations in form of saving banks, foundations with more than 50 employees, foundations that are responsible bodies for schools, foundations that are established with public authorities, etc.[123]

3.2.12. Portugal

The Portuguese law differs between private law foundations and foundations recognised for public utility.

(a) Private Law Foundation

A foundation is a collective body irreversibly endowed with certain assets to pursue the founder's will. It can be established inter vivos or by testament, Art. 185 Civil Code.

It needs an organisational structure with administrative body and a statutory audit committee Art. 162 Civil Code.

The purpose of the foundation may not be unrealizable in legal or material terms, illicit or against the public order or the morality, Art. 280 Civil Code. Furthermore, it is already excluded by definition to pursue any profit aim; a foundation has to work for a purpose of social interest (e.g. charitable, educational, scientific, artistic aim) Art. 157 Civil Code[124].

[121] EFC, Country Profile Netherlands, p. 1.

[122] EFC, Country Profile Netherlands, p. 2; van der Ploeg in Hopt/Reuter, The Netherlands, p. 409.

[123] http://www.kvk.nl/artikel/artikel.asp?artikelID=16057 &sectieID=102, 8 March 2005; van der Ploeg in Hopt/Reuter, The Netherlands, p. 412 f.

[124] http://www.pgdlisboa.pt/pgdl/textos/tex_mostra_doc.php?nid=20&doc=files/tex_0020_025.html, 24 June 2005.

The constituting act has to be notarised[125] and has to specify the aim of the foundation and the dedicated assets (Art. 186.1. Civil Code).

The founder may in the constituting act or in the statutes give instructions concerning the registered seat, administrative rules, rules for the transformation or dissolution of the foundations or establish the destination of the assets in case of liquidation (Art. 186.2. Civil Code).

The statutes have to contain at least the aim and the assets of the foundation, Art. 187 Civil Code; the competent authority has to approve the statutes and may suggest modifications, Art. 189 Civil Code.

Foundations have legal capacity according to art. 160.1. Civil Code.

They gain legal personality according to art 158.2 Civil Code by recognition by the competent administrative authority. They have to justify the social interest purpose and the existence of sufficient means to promote it (Art. 188 Civil Code). Therefore they have to submit the constitutional act and statutes to the competent administrative authority. The documents have to be published in the official gazette "Diário da República"[126].

(b) Foundation Recognised for Public Utility

Private law foundations can be recognised for public utility if they meet the requirements set out in Decree-Law 460/77, 7 November 1977.

For further details see Associations recognised for public utility 3.1.12. (c) on page 48.

3.2.13. Spain

Foundations are ruled by the Foundations Act 50/2002 "Ley 50/2002, de 26 diciembre, de Fundaciones"[127].

According to Art. 2.1., Foundations Act, foundations are non-profit organisations whose assets are allocated permanently in accordance with the will of the founder to achieve a purpose of general interest. General interest purposes (Art. 3.1 foundations act) are the protection of human rights, social assistance, cultural, educational, scientific or sport aims, cooperation for development, promotion of voluntary work, protection of the environment, promotion of the constitution and the democratic principles, the advancement of the rights of disabled people or any other public benefit purpose.

The foundation cannot pursue any private purpose, i.e. the beneficiaries are the general public and not only the founder, his family or related persons.

At least 70% of the annual income must be used for the public benefit purposes of the foundation.

The initial funds must be sufficient to allow the pursuance of the public benefit purpose of the foundation. According to Art. 12 Foundations Act, 30,000 Euros are presumed to be sufficient assets.

According to Art. 2.2 Foundations Act a foundation is ruled by the founder's will (the deed), the foundation's statutes and the Law.

The foundation can be established "inter vivos" or "mortis causa" (Art. 8). The constitution act has to contain the name of the founder, the wish to establish a foundation, the amount of the initial fund and its valuation and the form and reality of its contribution, the statutes and the composition of the board (Art. 10 Foundations Act).

The deed is forwarded to the registration office for approval and registration at national and regional level. According to Art. 4.1 Foundations Act, foundations receive legal personality after the public deed of incorporation has been registered in the Register of Foundations.

The statutes have to contain the name of the foundation, its purpose, the registered seat, the basic rules for the application of the resources for the fulfilment of the original aims and for the determination of the beneficiaries, the composition of the board and related rules and any other dispositions by the founder, Art. 11 Foundations Act.

3.2.14. Sweden

The Foundations in Sweden are governed by the Foundations Act of 25 August 1994 "Stiftelselag (1994:1220)"[128].

According to Chapter 1 Art. 2 of the Foundations Act (SL), a foundation is described as assets that are managed independently to pursue a specific purpose according to the deed of the founder.

[125] Alfandari/Nardone, p. 372, n. 4100.

[126] Alfandari/Nardone, p. 373, n. 4115.

[127] http://wwwn.mec.es/mecd/fundaciones/leg/docs/ley_fundaciones_boe271202.pdf, 25 November 2004.

[128] http://62.95.69.15/cgibin/thw?%24%7BHTML%7D=sfst_lst&%24%7BOOHTML%7D=sfst_dok&%24%7BSNHTML%7D=sfst_err&%24%7BMAXPAGE%7D=26&%24%7BTRIPSHOW%7D=format%3DTHW&%24%7BBASE%7D=SFST&%24%7BANDOR%7D=NOT&%24%7BFREETEXT%7D=stiftelselag&tidb=&UPPH=%3C2004-12-2, 25 February 2005.

The Foundations Act is applicable to ordinary foundations, fundraising foundations "insamlingsstiftelse" and collective agreement foundations "kollektivavtalstiftelse". Also safe guarding foundations "tryggandestiftelse" and pension foundations "pensionsstiftelse" under the Act on the Safeguard of Pension commitments are covered by the Foundations Act. Foundations with ecclesiastical property as well as foundations for the benefit of definite natural persons are not covered by the Foundations Act[129].

Furthermore there are foundations considered as enterprise foundations "näringsdrivande stiftelse"; they operate some kind of business and are also required to register with the authorities according to the SL. The commercial activity does not necessarily have to be connected to the purpose of the foundation[130].

There are two main categories of foundations: the largest group covers grant making foundations that receive their income from the return of invested assets "avkastningsstiftelse". They typically promote their purpose by paying contributions to one or several natural or legal persons from what it receives as running yield on investments in (e.g.) shares and bank accounts.

The second group is formed of operating foundations with business related activities "verksamhetsstiftelse" which promotes their purpose by exerting business activities. They differ fro, enterprise foundations as an operating foundation's business has to be related to the purpose. That is why an enterprise foundation can only be defined as an operating foundation if this enterprise is also connected to or is part of the purpose of the foundation[131].

(a) Ordinary Foundation

The requirements for setting up an ordinary foundation are:

The setting up needs two legal acts by the founder - the deed of the foundation and the transfer of property in accordance with the deed.

The founder (natural or legal person) has to have the power to decide over the property that he is going to transfer to the foundation, Ch 1, § 2 SL.

There has to be a written deed containing the purpose and the property, Ch. 1 § 3 SL. The description of the purpose has to include the object, the area of activity as well as the list of beneficiaries and has to be detailed in order to be executed. It is not allowed to state any immoral, illicit or impossible purpose nor the advancement of the personal interest of the founder.

There has to be a sufficient quantity of assets to guarantee the promotion of the purpose.

The name of the foundation has to contain the word "stiftelse" (i.e. "foundation") Ch 1, § 6 SL.

The foundation has to be administrated either by a board of directors formed by natural persons who have undertaken the management "egen förvaltning" or through linked administration by an already existing legal person "anknuten förvaltning". The administration has to ensure that the instructions of the deed are observed, that the assets are invested in an acceptable way and that the foundation fulfils its obligations, Ch. 2, §§ 2, 4 SL.

There has to be at least one auditor in each foundation. He must not have any personal interest or any relation to another person with personal interest in the foundation, Ch. 4, §§ 1, 6 SL.

The foundation gains legal personality by being founded, thus by the transfer of the property according to the deed, independent from any registration[132].

Any modifications of the deed concerning the purpose of the foundation, the application of the assets, the administrative structures and rules or the accounts and auditing have to be permitted by the "kammarkollegiet"[133].

(b) Fund-Raising Foundation

The fund-raising foundation type has a unique feature, unlike all other Swedish foundations, because it is not required to have an initial donation to be considered a foundation. Instead a public call for donations suffices for the foundation to have legal capacity[134].

Additional requirements for setting up a fund-raising foundation:

- one or several founders have to make a signed statement that money will be collected to form a property which will be used for a permanent purpose

[129] Hemström in Hopt/Reuter, Sweden, p. 457; Wijkström in Schlüter/Then/Walkenhorst, Sweden, p. 239.

[130] Wijkström/Einarsson, p. 36.

[131] EFC, country profile Sweden, p. 1; Wijkström/Einarsson, p. 36.

[132] Hemström in Hopt/Reuter, Sweden, p. 459 ff.

[133] http://www.kammarkollegiet.se

[134] Wijkström/Einarsson, p. 35.

- the declaration of one person that he is going to receive the money and to administer it according to the statement[135].

3.2.15. United Kingdom

There is no separate legal form for foundations, and the form that any particular foundation should take is not prescribed in law.

Thus foundations may take the form of any incorporated or unincorporated organisations, e.g. trusts, companies limited by guarantee, Royal Charter bodies, organisations created by Act of Parliament, Friendly Societies or Industrial and Provident societies.

The legal form of a foundation does not matter greatly because whether or not it is regarded as of public benefit depends not on its form but on its purposes, in particular whether or not they are charitable[136].

3.3. Non-Profit Organisation (NPO)

3.3.1. Austria

NPO (non profit organisations) have a minimum of formal organisation including legal status and differ from spontaneous initiatives (that appear only for a specific occasion and temporarily). They are private, thus non-governmental organisations; there is the possibility to receive financial support by the government.

The earned profits have to be spent on the organisations' purpose. There is no profit distribution to members or owners/founders of the organisations. There is a minimum of self-government and autonomy, thus there is no total control (in a legal sense) from anyone outside the organisation.

There is a minimum of voluntary work both in the administrative activities and the management as well as in the attributions[137].

NPOs include the legal forms of:

- Associations
- Foundations
- Public benefit companies
- Political parties
- Cooperatives
- Private limited companies
- Public corporations

95 % of the NPOs are organised as associations since the barriers to establish a cooperative, a limited company or a foundation are very high[138].

3.3.2. Belgium

The NPO sector in Belgium is formed by the following types of entities:

- factual associations
- professional associations
- not-for-profit associations
- international not-for-profit associations
- private foundations
- public benefit foundations
- boards of local religious communities

3.3.3. Denmark

The legal system draws a distinction between non-profit entities only in terms of associations and foundations[139].

3.3.4. Finland

There is no explicit definition of NPOs in Finnish laws; in general the term is used only in official statistics.

The major form of NPOs are associations, but they also include foundations and some cooperatives. In addition, several forms of new organisations (e.g. partnership projects, activity centres, self-help groups) fall on the borderline between for-profit, public and not-for profit entities[140].

3.3.5. France

There is no legal definition of NPOs in France but NPOs are comprised by the Associations Act.

NPOs are organisations of the private law, conducting non-profit making activities on an international level. They are characterised by the

[135] Hemström in Hopt/Reuter, Sweden, p. 471.

[136] EFC, Country profile England and Wales, p. 1.

[137] http://www.iogv.at/startset.html, 28 February 2005.

[138] http://www.osgs.at/downloadtexte/Was_eine_NPO_ist.pdf, 28 February 2005.

[139] Alfandari/Nardone, p. 80, n. 10.

[140] Helander/Sundback in JH Working Paper Finland, p. 8, 19

private law origin of their constitution, the public benefit of their activity and the international character of their objectives.

Associations, as well as religious congregations, mutuals, cooperatives and entities of the social economy can form NPOs. They have to work for any social, cultural, educational or religious purposes.

3.3.6. Germany

There is no statutory definition of NPOs in Germany. The main criterion for such a classification is the charitable/non-profit nature of the organization's objectives as laid out in its statutes as well as the applicable fiscal legislation ('Organisation with charitable, benevolent or churchly purposes in accordance with §§ 51 ff AO' - see VI.)

3.3.7. Greece

No definition for NPOs could be found for Greece.

3.3.8. Ireland

The NPOs in Ireland can take the legal form of any incorporated or unincorporated organisation.

Unincorporated organisations take the form of friendly societies or industrial and provident societies. All these entities can be recognised as charities[141].

3.3.9. Italy

An NPO may be established to serve various causes and can assume several different legal forms. No special authorization is required for the establishment of an NPO unless otherwise provided by the law applicable to certain legal forms.

3.3.10. Luxembourg

There is no specific definition for NPO in Luxembourg.

3.3.11. The Netherlands

In the Netherlands there are three basic types of non-profit organisations: foundations ("stichting"), associations ("vereniging") and the church. Churches have no specific legal regulations, but might be organised as foundations or associations[142].

3.3.12. Portugal

There is no specific definition for NPO in Portugal.

3.3.13. Spain

NPOs are governed by the Law on patronage "Ley 49/2002, de 23 diciembre, de Régimen fiscal de las entidades sin fines lucrativos y de los incentivos fiscales al mecenazgo"[143].

A non-profit organisation is an entity that has been established as a foundation, association recognised for public utility, NGO for Development, the branch of a foreign foundation that has been registered to the foundation register, federations and associations of non-profit entities or the Spanish sport federations, the Spanish Olympic Committee and the Spanish Paralympics Committee.

It has to meet the following requirements:

- It has to work for an aim of public benefit, i.e.
  - protection of human rights
  - social, cultural, educational, civil, scientific, sportive or health assistance
  - institutional strengthening
  - cooperation for development
  - promotion of the voluntary and/or social activity
  - protection of the environment
  - promotion of the rights of disabled persons
  - promotion of the constitution and democratic principles
  - promotion of tolerance, of social economy
  - development of scientific and technical research
- spend at least 70 % of the following income/rents on the purpose:
  - the income of their economic activities
  - the rents for the distribution of goods and property rights

[141] Alfandari/Nardone, p. 486, n. 1000-1040.

[142] Burger/Dekker/Veldheer in Schlüter/Then/Walkenhorst, The Netherlands, p. 196.

[143] http://www.igsap.map.es/cia/dispo/lbe.htm, 26 November 2004.

- the income that they obtain by any other concept, minus the expenses made for the obtaining of such income

- the activity does not consist of the development of economic operations for other objectives other than the statutory purposes

- the statutory founders, associates, patrons, representatives, members of the board and any of their relatives do not benefit from the activity

- the position of the patrons, the statutory representatives and the members of the board is unpaid

- in the case of the dissolution, the patrimony is destined to another organisation, recognised as NPO.

- is inscribed in the corresponding register

- fulfil the requirements for accounts corresponding to the rules of their type of organisation

- fulfil the obligations established its specific legislation to file accounts with the administrative body in charge. In absence of specific legislation they have to file accounts within six months after the closing down of its activities

- elaborate an annual economic report in which the income and expenses of the exercise are specified in a way that they can be identified by categories and projects, as well as the percentage of participation that maintains in mercantile organisations.

3.3.14. Sweden

There is no specific definition for NPO in Sweden.

3.3.15. United Kingdom

Traditionally, the term 'voluntary sector' has been used. This is a reasonable way to describe charities, most (but not all) of which are overseen by an unpaid board of trustees, and many of which also have other volunteer input, and some other voluntary organisations.

However, as the sector becomes more entrepreneurial, the term only really captures one element of their activity. It is even harder to see how the term has any relevance to cooperatives and social enterprises, which often have no voluntary input. The term 'voluntary and community sector' captures some additional community organisations, but is still not comprehensive.

The phrase 'Third Sector' has also been fairly widely used. Although it marks out the sector as something different from both government and business, it does little to define the sector itself and is unlikely to be well recognised by the general public.

A term which captured the distinctive purpose of these organisations would be preferable. There are two ways to do this. One is to identify what the sector is not about: making profits for investors. The term 'non-profit' is widely used in the USA. However, to some extent it carries the inaccurate implication that organisations are aiming only to break even, whereas they are in fact aiming to make a surplus – in order to reinvest this into a social purpose. The phrase 'not-for-profit', which captures the fact that such organisations are not working just for the purpose of making a profit, but rather to make a profit as a means to an end, addresses this concern[144].

Organisations in this sector can be unincorporated or incorporated.Unincorporated organizations are required to register with the Charity Commission if they attain an annual income >£1,000. These organizations may call on public generosity and engage in fundraising activities only if they meet the respective licensing requirements.

3.4. Non-Governmental Organisation (NGO)

This section handles the definition of Non-Governmental Organisations (NGO). Apart form the general definition for NGOs it also includes the definitions for Non-Governmental Organisations for Development (NGOD) because NGOD is the specific category for organisations working with aid funds.

3.4.1. Austria

(a) NGO

There is no specific definition for NGO in Austria.

(b) NGO for Development

In Austria there is no specific definition for NGO for Development.

3.4.2. Belgium

(a) NGO

In Belgium there is no specific definition for NGOs.

(b) NGO for Development

[144] http://www.number-10.gov.uk/su/voluntary/report/downloads/strat-data.pdf.

The Ministry of Foreign Affairs recognises as non-governmental organisations for development entities that meet the following requirements, set up by Art. 2–5 Arrêté royal relatif à l'agrément et à la subvention d'organisations non gouvernementales de développement du 1997-07-18:

The entity has to meet the requirements set up by Art. 10 Loi Coopération internationale du 1999-05-25:

- the organisation has to be either established as foundation respectively association for public utility according to the Loi du 1921-06-27 or has to be a company with social aim pursuant to Loi du 1996-04-13
- the principal aim of the organisation's activity has to be the cooperation for development
- it has relevant and contemporary experience in domains defined by the King that are proved by activities reports of the last three years
- it has a planned approach that is based on a perennial program, including a financial plan
- it must be independent
- has to be capable of ensuring the continuity of its activity
- the majority of the board members have to have Belgium nationality
- conduct their activities pursuant to the aims of the Belgium International Cooperation set up in Art. 3 Loi du 1999-05-25. That means the long lasting human development
- make allowance for the criteria for pertinence set up by Art. 4 Loi du 1999-05-25
- have a transparent accountancy

The perennial program has to contain:

- a precise description of the activities based on the analysis of its identity, of the internal surroundings of its functions, and of its strong and weak points as an organisation
- a description of its perception regarding the international co-operation, its long-term objectives and the strategy which it is going to use to reach them, including the organisational and institutional implications for the organisation
- the financial plan which gives a scheme of all means that the NGO intends to spend to implement the objectives. The means of the NGO as well as those received by public instances/private sponsors have to be shown. The latter have to be listed separately.

Independence according to Art. 10 Loi du 1999-05-25 signifies that the personnel of the Ministry of Foreign Affairs, of the Foreign Commerce and the International Cooperation or the members of the Cabinet of Ministers cannot fill a position of management within the NGO. Furthermore relations of the NGO with third parties cannot be maintained if they subordinate the statutory aims of the NGO to the interests of the third party.

To prove the continuity of the activity, the NGO has to have at least one full-time employer (or any equivalent), of a location that is exclusively reserved for the NGO where a permanence is assured during the office hours and of sufficient capital more than half of which has to be of Belgian origin.

3.4.3. Denmark

(a) NGO

There is no general definition on NGOs in Denmark.

(b) NGO for Development

There is a definition for NGOs for Development given by the Danish International Development Assistance.

The Danish International Development Assistance (Danida) recognises as NGOs for Development organisations that:

- are private
- have legal seat in Denmark
- have existed for at least 1 year
- have at least 50 contributing members
- are non-profit making
- work in the development sector
- have approved statute
- have an accounting system, which is under control by a public auditor
- must proof the competence to carry out the financed project

3.4.4. Finland

(a) NGO

There is no general definition of NGOs in Finland.

(b) NGO for Development

The Ministry of Foreign Affairs defines NGOs for Development[145].

According to the Ministry of Foreign Affairs, NGOs for Development are organisations that are non-profit organisations (associations, foundations or organisations), registered in Finland with the "National board of patents and registration" that have legal capacity to operate. They have to work in the development sector and have to be partly self financing that means that the NGO has to contribute at least 20 % of the project costs.

The NGO has to apply professional auditing, bookkeeping and reporting systems and practices.

In order to qualify for financial support, the NGO and the project must fulfil the following general requirements:

- The NGO has to have sufficient expertise in implementing and managing projects.
- The objectives and scope of the project have to be realistic in relation to the NGO's own resources, its experience in development and its ability to gather own financing.
- The Finnish NGO has to have a local partner which is responsible for the local implementation of the project. The partner should preferably be a local NGO or other clearly defined organisation or group which has been active for at least a year.
- The project is in line with Finland's Development Policy Objectives and also supports the development objectives that are in place in the partner country.

3.4.5. France

There is no legal definition of NGOs in France but NGOs are comprised by the Associations Act.

NGOs are organisations of the private law, conducting non-profit making activities on an international level. They are characterised by the private law origin of their constitution, the public benefit of their activity and the international character of their objectives.

Associations, as well as religious congregations, mutuals, co-operatives and entities of the social economy can form NGOs. They have to work for any social, cultural, educational or religious purposes.

3.4.6. Germany

There is no specific law defining NGOs in Germany but there is a definition by the Ministry of Economic Collaboration[146].

NGOs are all federations or groups, which are not dependent on governments or national places and represent common interests (trade unions, churches, sport clubs, etc). In general linguistic usage however the term NGO has become accepted for organisations, associations and groups, which engage themselves socio-politically. Some important and typical operating fields of NGOs are development policy, environmental policy and human right policies.

3.4.7. Greece

No definition for NGOs could be found for Greece.

3.4.8. Ireland

There is no separate legal form for NGOs but Ireland has a rich diversity of types of NGOs. While the customary broad division between mutual benefit and public benefit applies, this accommodates a range of NGOs including cooperatives, charities, religious organizations, trade unions, residents' associations, foundations, self-help groups etc., which may take the following legal forms[147]:

- Unincorporated association
- Trust
- Company limited by guarantee
- Industrial and Provident Society
- Friendly Society
- Charitable company

3.4.9. Italy

(a) NGO

[145] http://global.finland.fi/english/projects/ngo/require.htm, 10 November 2004.

[146] http://www.bmz.de/de/service/glossar/nichtregierungsorganisation.html, 15 November 2004.

[147] http://www.usig.org/countryinfo/ireland.asp, 29 September 2005.

Non-governmental organisations can assume the legal status of incorporated or non incorporated associations, foundations or committees.

(b) NGO for Development

If they are working with developing countries, they can be recognised by the Ministry of Foreign Affairs as NGO for Development.

Organisations therefore have to meet the following criteria:

NGO for Development:

- have to be incorporated under civil law (according to art. 14, 36, 39 of the civil code)
- its purpose has to be the cooperation in the development sector
- they do not pursue profitable aims and commit to spent any surplus on the purpose set up above
- have to be independent from any profit organisation and have no relation to any public or private entity that works on profit
- prove their ability to carry out the projects in providing the necessary structural and personal qualifications
- have at least three years of experience in this sector
- accept the possibility of regular controls by DGCS (Direzione Generale per la Cooperatione allo Sviluppo)
- provide the annual accounts of the last 3 years and document that they stick to the accountancy rules
- commit themselves to publish annual reports to promote their current activities

3.4.10. Luxembourg

(a) NGO

There is no specific definition for NGOs in Luxembourg.

(b) NGO for Development

Certain entities can be recognised as NGOs for development co-operation. They are ruled by the Law on Development Co-operation from 6 January 1996 "Loi du 6 janvier 1996 sur la coopération au développement"[148].

Entities that are established as non-profit associations, foundations or organisations recognised for public utility can be recognised as non governmental organisations that pursue the aim of development co-operation, Art. 7.1. Loi du 6.1.1996.

The Ministry of Foreign Affairs grants recognition to the entities that justify that they have the capacity, the competence and the experience to work in the field of cooperation in development, Art. 7.2. Loi du 6.1.1996.

The "Fonds de la Coopération au Développement" is established with the Ministry of Foreign Affairs to contribute to the development co-operation, Art. 2 Loi du 6.1.1996.

3.4.11. The Netherlands

There is no specific definition for NGOs in the Netherlands.

3.4.12. Portugal

(a) NGO

There is no specific definition for NGOs in Portugal.

(b) NGO for Development

The Ministry of Foreign Affairs recognises organisations that meet the following requirements as NGOs for Development:

An NGO for Development is a non-profit making organisation that does not pursue political, labour union related, religious or military aims, Art. 2, 3.

It can be established by a singular person or by entities with a legal seat in Portugal, Art. 4.

The NGO for Development gains legal personality under the general terms of law, Art. 5.

The purpose of the NGO for Development has to be the support to programs of social, cultural, environmental or civil scope by means of activities in developing countries consisting of

- cooperation for the development;
- humanitarian assistance;
- emergency aid;

[148] http://www.mae.lu/images/biblio/biblio-140-603.pdf, 15 December 2004.

- protection and promotion of the human rights

According to Art. 12, organisations that are registered as NGOs for Development are automatically considered as organisations recognised for public utility.

3.4.13. Spain

(a) NGO

There is no specific definition for NGOs in Spain

(b) NGO for Development

NGOs for Development are ruled by the Law of 7 July 1998 "Ley 23/1998, de 7 de Julio, de cooperarción internacional para el desarrollo"[149] for the international co-operation for development.

Non-governmental organisations of Development are organisations of private law that are legally constituted. They have to be non-profit making. Their aim has to be the realisation, according to their own statutes, of activities related to the principles and objectives of the international co-operation for development.

They must have full legal capacity and a structure to guarantee the fulfilment of their aims.

3.4.14. Sweden

There is no specific definition for NGOs in Sweden.

3.4.15. United Kingdom

There is no specific legal definition for NGOs in the United Kingdom.

3.5. Other Legal Forms

This section handles other legal forms of entities that can form part of the non-profit sector. It includes definitions for funds, co-operations, civil society, charities and other forms with non-profit activities.

3.5.1. Austria

(a) Funds

Funds ("Fonds") are legal entities consisting of assets to be used to pursue public benefit or beneficial purposes for a limited period of time, Art. 22 BSFG. Apart from this rule, the rules governing public benefit foundations apply also to funds (Art. 22 till 38 BSFG).

(b) Money Collections

All organisations that intend to publicly collect donations (e.g. in the streets) have to get permission by the authority of the respective province two months in advance.

3.5.2. Belgium

(a) Company with Social Purpose

According to the Company Code, a Company with Social Purpose has to be a company that obtained legal personality pursuant to Art. 2 § 2 Company Code. It is not supposed to be dedicated to the enrichment of its associates.

Its statutes have to have the following content:

- the associates seek only limited patrimonial benefit or no patrimonial benefit at all a precise definition of the social aim to which the activity of the company is dedicated and do not assign any indirect patrimonial benefit to the associates

- a definition for the assignment of the profits in conformity with the internal and external purposes of the company and in accordance with the hierarchy established in the statutes

- constitute the vote quotas at the general assembly

- the declaration that the rate of direct limited patrimonial benefit for the associates cannot exceed the interest rate fixed by the King in execution of the "Loi du 1955-07-20" concerning the institution of a national council for cooperation

- provision that the administrators have to submit a special annual report on the execution of the activities that are conducted to realise the social aim; it lays down that the expenses have to be elaborate compared to the investments, the operating expenses and the allowances to privilege the realisation of the social purpose; it has to be integrated into the annual report, established according to Art. 95, 96 Company Code

- envisage the modalities for each member of the personnel with full legal capacity to acquire, at the latest one year after his engagement, the status of an associate

- constitute that a surplus after the liquidation has to be assigned to a goal similar to the social purpose of the company

[149] http://www.aeci.es/4-Legislacion/ftp/Bases/LeyCooperacion.pdf, 25 November 2004.

Without prejudice to the above mentioned rules, the general rules for companies apply for the company with social purpose depending on the chosen company form.

3.5.3. Denmark

There are no definitions concerning other legal forms.

3.5.4. Finland

(a) Cooperatives

Cooperatives are regulated by the Cooperative Act. A cooperative is a corporation which at the outset neither has a definite capital nor a definite number of members, but the intention to engage in economic activity for the benefit of members. A cooperative does not have an ideological purpose but differs from other economic associations through the principle of cooperation. It is established by registration. There are two types of cooperatives: the traditional form, working on a profit basis and the neo-cooperatives that can be linked with non-profit grounds[150].

(b) Organisation working for public benefit – definition by the tax authority

The tax authority defines an organisation working for the public benefit as follows[151]:

An organisation qualifies for tax benefits if it is active exclusively and directly for public benefit in material, intellectual, moral or social matters; its activities do not focus only on a small beneficiary group; and it does not distribute any economic benefits in the form of dividends, interests or unreasonable salaries to persons associated with it.

Recognition of exempt status requires ongoing non-profit activities and is conferred by the tax authorities.

(c) Money Collection

To conduct money collection, a money collection license is needed.

Under section 4 of the Money Collection Act, a money collection license may be issued only to a domestic registered association, other organisations or an independent foundation which has a solely social, cultural or other ideological purpose. As an exception to the normal licence practice, a money collection licence is not necessary for collection conducted among participants in a public meeting by the organiser of the meeting under section 3 of the Money Collection Act. In addition, a money collection licence is not necessary for money collection related to a private person's special day or help for a neighbour.

Data on money collection license is entered in the register of associations.

3.5.5. France

(a) Associations that collect donations from the public

An association that wants to collect donations from the public through national campaigns on the street or in the media in order to support a scientific, social, family, humanitarian, philanthropic, educational, sports, cultural or environmental cause needs to make a prior declaration to the local prefecture where its head office is located, according to Art. 3 Act 91-772 of 7 August 1991. The declaration has to specify the purpose of money collection. Furthermore, the association has to prepare an annual statement of fund collected from the public and give details of how the donations are used by each type of expenditure. The statement must be available for consultation by members and donors at the association's head office (Art. 4 Act 91-772).

3.5.6. Germany

(a) Civil Society

There is no specific law defining Civil Society in Germany but there is a definition by the Ministry of Economic Collaboration[152].

Originally the term was developed by the Italian theoretician Antonio Gramsci (1891 - 1937). He understood by it encompass all non-governmental organisations, which have an influence on the "understanding of everyday life and the public opinion".

Today the term describes all the commitment of the citizens of a country beyond of national decision-making processes. In addition all activities, which are not profit-oriented and not dependent on party-political interest, are included. The institutions of the civil company are structured democratic.

Different politics policies describe the civil company as component, which is necessary apart from the state and the forces of the market, in order to create an ideal pluralistic society from engaged citizens.

[150] Helander/Sundback, JH working paper Finland, p. 15.

[151] http://www.finlex.fi/fi/laki/alkup/1992/19921535?search%5Btype%5D=pika&search%5Bpika%5D=tuloverolaki, 10 November 2004.

[152] http://www.bmz.de/de/service/glossar/zivilgesellschaft.html, 15 November 2004.

(b) Organisation with charitable, benevolent or churchly purposes

For the recognition as "organisation with charitable, benevolent or churchly purposes" in accordance with §§ 51 ff Federal Fiscal Code "Abgabenordnung (AO)" the following requirements have to be met:

The organisation has to be a corporation in accordance with § 1 Company Tax Code "Körperschaftssteuergesetz (KStG)": that are

- capital companies (stock companies, association limited by shares, limited corporation)
- cooperative societies or provident societies
- mutual insurance association
- private law corporations (e.g. registered associations and foundations)
- unregistered associations and foundations
- commercial businesses of public corporations

Pursue one of the following purposes:

- charitable purpose

  working for the benefit of the public, not only for the benefit of members or a limited circle of persons

  any material, intellectual or moral topic as:

  advancement of science, research, education, culture, art, religion, development aid or the protection of the environment

  advancement of sports and welfare

  advancement of the democratic political system

  advancement of animal or plant breeding, traditions or amateur radio

- benevolent purpose
- churchly purpose

They have to pursue the purpose in an altruistic way. Therefore the means have to be spent on the purpose of the organisation.

The organisation has to work exclusively and directly on that purpose.

(c) Donation Collection

The collection of donations in public areas is regulated at the regional level. Prior approval and state permission is required for certain collections in order to guarantee the proper use of the collected funds.

3.5.7. Greece

No definition for other legal forms could be found for Greece.

3.5.8. Ireland

(a) Charity

There is no comprehensive definition of charities or what is charitable in legislation.

The only definition which may be found for a charity is contained in Section 208 Taxes Consolidation Act, 1997 and this merely states that:

"...charity means any body of persons or trust established for charitable purposes only".

The following interpretation is made by the Irish Revenue[153]:

Established is understood as meaning "established in the State". The result of this interpretation is that an applicant body must be controlled from and have its place of effective management in the State.

"Charitable purposes only" means the charitable purposes stems from Lord MacNaghten's judgement on the Pemsel case (known as the Four Heads of Charity) as:

The relief of poverty;

the advancement of education;

the advancement of Religion;

other works of a charitable nature beneficial to the community

A charity has to be "non-profit making" and working for "public benefit".

NGOs may directly carry out economic activities so long as the activities have an accessory character and are closely connected to the main purpose of the entity.

(b) Trust

[153] www.revenue.ie/services/foi/s16_2001/charity.pdf, 23 November 2004.

A trust is an arrangement whereby one or more persons operating under the authority of a "deed of trust" hold/s funds or property on behalf of other persons; its governing instrument is a trust deed or will and its executive power rests with trustees appointed under the terms of the trust. A trust has no legal personality and it is the trustees rather than the body which must enter into legal relations and accept personal liability[154].

3.5.9. Italy

(a) Social utility non-profit organisations (ONLUS)

The Social utility non-profit organisation "organizzazioni non lucrative di utilità sociale (ONLUS)" do not represent a new type of legal entity but they are a fiscal category that includes non-profit organisations, provided those meet the specific legal requirements.

Social utility non-profit organisations (ONLUS) are associations, foundations, cooperatives, panels or other private entities (with or without legal personality) that provide certain affirmations in their statutes or their constitutional act.

Affirmations:

- The organisations activities are based in one of the following sectors:

  social assistance

  health assistance

  charitable purposes

  education or instruction

  training and amateur sports

  promotion of artistic and historic matters

  protection and development of nature and environment

  promotion of culture and arts

  protection of civil rights

  scientific research of particular social interest

- It is acting exclusively for this sector

- The prohibition to conduct other activites then the set up activities

- The prohibition to distribute the profits and operating income

- The obligation to reinvest the effects on the purpose

- The obligation to dedicate the patrimony of the organisation to other organisations of social utility (ONLUS) or to use them for social utility aims in the case of the dissolution

- The obligation to draw up balance sheets and annual accounts

- unitary regulation about the memberships

The beneficiaries are either disadvantaged people or foreign entities working for the humanitarian aid sector and not the associates/partners/participators of the organisation.

The recognition as "social utility purpose" is inherited to the sectors social assistance, charitable purposes, artistic and historic matters, nature and environment matters as well as scientific research.

Other activities are recognised as directly attached to the social purpose as long as they are not predominant and the proceeds of these do not exceed 60 % of the expenses of the organisation.

Activities that are only indirectly linked to the utility fall under the prohibition of the distribution.

The organisation must not be a public entity.

'ONLUS' is a autonomous fiscal category for NPOs. If the organisations want to benefit from any facilities set up in this law (especially concerning the taxation rules) they have to be registered with the ONLUS registration office (l'anagrafe unica delle ONLUS).This office is held by the Revenue Agency (Agenzia delle Entrate) of the Ministry of Finance.

Non-governmental organizations, voluntary organizations and social cooperatives do not need to apply for ONLUS status since their form and stated objectives make them ONLUS by default.

(b) Committee

Committees are formed by the conventional will of a number of persons to create a fund in order to pursue a common objective. The founding and the managing members of the Committee are all individually and jointly responsible for the proper utilization of the collected funds.

(c) Voluntary Organisation

[154] http://www.usig.org/countryinfo/ireland.asp, 29 September 2005.

Voluntary organisations are governed by the Law 266/1991 "Legge 11 agosto 1991, n. 266 Legge-quadro sul volontariato (Pubblicata in G.U. 22 agosto 1991, n. 196)"[155].

According to this law, a voluntary organisation is any organisation that primarily and expressly avails itself of the personal, voluntary and free-of-charge service of its members. It must perform its activities on a non-profit basis and exclusively for solidarity purposes. Voluntary activities cannot be rewarded and only expenses agreed in advance can be reimbursed.

Voluntary organisations can adopt the legal form they regard as best suited to the pursuit of their aims.

The statutes have to contain the non-profit making character, the democratic nature of its structure, the eligibility and free-of-charge nature of its associative tasks, the gratuitous character of the service provided by its members, the criteria for the admission and exclusion of the latter as well as their obligations and rights.

The obligation to create the balance of accounts showing the assets, contributions and received legacies and approval by the assembly and the members, must be determined.

Voluntary organizations are regulated at a regional/provincial level and the regions/provinces maintain registers on them. Registration is mandatory for an organization to qualify for tax exemptions and to receive public donations.

(d) Social Co-operatives

Law 381/1991 provides for social cooperatives as organizations formed to pursue the welfare of the community as well as the social integration and advancement of individuals. General cooperative legislation applies and social cooperatives are listed in the cooperatives' register of the prefect after being audited by the provincial monitoring commission.

(e) Fund-raising organisations

Fund-raising organizations are not recognized as a specific legal form. Furthermore fund-raising is not a specially regulated activity, as donations can be received through personal current accounts and there is no obligation to issue a receipt if the donation is offered in cash. Nevertheless, the ONLUS Agency retains the oversight of fund-raising performed by NPOs.

[155] http://www.fondazionepromozionesociale.it/L266_91.html, 14 June 2005.

3.5.10. Luxembourg

There are no other relevant legal forms in Luxembourg.

3.5.11. The Netherlands

(a) Funds

Funds ("fondsen") are financial assets established to provide money for particular purposes[156]. They are a subset of foundations and are primarily concerned with raising and donating money ('transferring money for public purposes'); thus almost all funds are foundations.

To establish a fund, no state permission is required, nor are there any specific legal obligations. But for door-to-door and on-the-street collections they need a municipal permit that is only provided on the basis of CBF quality marks.

A distinction can be made between

funds that raise money; they primarily seek financial support from the population, the government or businesses (so called 'fundraising funds'). Lotteries are a special type of fundraising foundations

and

funds that do not raise money; they are grant makers that do not seek public support. The majority of these funds are trust funds that manage the proceeds from assets[157].

3.5.12. Portugal

There are no other relevant legal forms in Portugal.

3.5.13. Spain

(a) Religious entities

Religious entities in Spain can be registered in a special register for religious entities held by the Ministry of Justice

3.5.14. Sweden

(a) Civil Society

[156] EFC, Country Profile Netherlands, p. 1.

[157] Burger/Dekker/Veldheer in Schlüter/Then/Walkenhorst, The Netherlands, p. 196 f.

The definition of Civil Society by the Committee of International Cooperation of the Ministry of Foreign Affairs is as follows[158]:

Civil Society is an arena, separate from the state, the market and the individual household in which people organize themselves and act together to promote their common interests.

(b) Voluntary Sector

The term voluntary sector "frivilligsektor" refers to those segments of the non-profit sector devoted to social service delivery. The term focuses more on the activity than the purpose, emphasizing the voluntary aspect of participation[159].

(c) "Ideell" Sector

Another common label used in Sweden for the non-profit sector is "ideell sector", perhaps the most politically-neutral term. In the legislation, "ideell" and "allmännyttig" (public good) are used interchangeably, even though "ideell" has a somewhat broader meaning. The concept of an "ideell" sector permits a clear and, we think, essential distinction to be made between the public-good efforts of the private realm and those provided, for example, by volunteers in different forms of public or semi-public organisations. The term has been thought to apply principally to associations, excluding foundations. This is contradicted by our survey, in which more than one third of the foundations claimed to be a part of the "ideell" sector[160].

3.5.15. United Kingdom

(a) Charity

(i) England and Wales

The Legal principles governing charities in England before the enacting of the Charity Bill:

To be a charity an organisation must fall within the law's understanding of "charity" and be subject to the jurisdiction of the High Court (Charities Act 1993, p. 96(1)).

In order to fall within that definition an organisation must have purposes which are exclusively charitable and must be set up for the benefit of the public.

The classified charitable purposes ("The four heads of Charity") are:

- relief of poverty (1st head);
- advancement of education (2nd head);
- advancement of religion (3rd head); and
- other purposes beneficial to the community (4th head).

A purpose will be accepted by the courts and the Charity Commission as charitable only if it is for the benefit of the public. The public benefit status can only be achieved if two conditions are fulfilled: first, the organisation must be capable of having a positive effect, and not cause harm to the public. Second, those eligible to receive benefits must (except in the case of organisations set up exclusively to relieve financial hardship) comprise a large enough group to be considered as the public or a sufficient section of the community and no personal or private relationships must be used to limit those who may benefit[161].

Charities have to register with the Charity Commission of England and Wales. It is possible for one charity to be registered with both, the Company House and the Charity Commission.

It should be noted that the Charities Act 1993 creates classes of "excepted" and "exempt" charities. Excepted charities are not required to register with the Commission, and do not have to comply with the monitoring arrangements outlined below; but they are in theory subject to the Commission's jurisdiction with regard to exclusively charitable matters such as a breach of trust. Exempt charities are organisations that are ostensibly charitable but that are considered to be adequately regulated in respect of their activities and functions by another government department or public authority. Accordingly, they are not within the jurisdiction of the Charity Commission although they can take advantage of the enabling powers of the Charity Commission.

There is no centralised list of excepted and exempt charities but the categories of exempt charities are set out in Schedule 2 of the Charities Act 1993.

The minimum requirements for registration as a charity are:

- an income of more than £1000 a year; or
- the use or occupation of any land or buildings; or

[158] http://www.sida.se/content/1/c6/02/65/42/SIDA3814en_Policy%20for%20support_web.pdf, 1 December 2004.

[159] Lundström Tommy/ Wijkström Filip in JH Working Paper, Sweden, p. 9.

[160] Lundström Tommy/ Wijkström Filip in JH Working Paper, Sweden, p. 9.

[161] http://www.charity-commission.gov.uk/publications/pdfs/rr1atext.pdf, 19 November 2004.

- assets which constitute permanent endowment (ie where there is a restriction on the expenditure of the capital and (normally) only the income can be spent on the charity's purposes[162]

The legal principles governing the charities in England under the "Draft Charities Bill for England and Wales" are[163]:

For the purposes of the law of England and Wales, 'charity' means a body or trust which is established for charitable purposes only, and is subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

A charitable purpose is a purpose which falls within any of the following descriptions of purposes:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health;
- the advancement of citizenship or community development;
- the advancement of the arts, heritage or science;
- the advancement of amateur sport;
- the advancement of human right, conflict resolution or reconciliation;
- the advancement of environmental protection or improvement;
- the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- the advancement of animal welfare;
- any other purpose within this subsection of the law.

Furthermore, the purpose has to be for the public benefit. In determining whether that requirement is satisfied in relation to any such charitable purpose, it is not to be presumed to be a charitable purpose.

Public benefit is understood as the term of the law relating to charities in England and Wales.

Charities may be incorporated or unincorporated and therefore the classification of an organization as a charity does not refer to its legal form but to the official acknowledgement of its mission.

Under the Draft Charities Bill, the registration threshold is to be set at £ 5,000 of annual income. This will significantly increase the amount of small community level organisations that are effectively charitable but are not held on a central register of any sort.

(ii) Scotland

Legal Principles governing charities in Scotland until the enacting of the Charities Bill (Scotland) are to be found in Section 506 of the Income and Corporation Taxes Act (1988)[164].

Accordingly "charity" means any body of persons or trust established for charitable purposes only.

There is only this definition of charity according to the tax law, which is available in the whole of UK.

Legal Principles governing charities under the "Draft Charities and Trustee Investment (Scotland) Bill"[165]:

This definition sets out 13 "charitable purposes" and a second stage "public benefit test":

- the prevention or relief of poverty
- the advancement of education
- the advancement of religion
- the advancement of health
- the advancement of civic responsibility or community development
- the advancement of the arts, heritage, culture or science
- the advancement of amateur sport
- the advancement of human rights, conflict resolution or reconciliation
- the advancement of environmental protection or improvement

[162] http://www.charity-commission.gov.uk/publications/cc21.asp#p16, 19 November 2004.

[163] http://www.official-documents.co.uk/document/cm61/6199/6199.pdf, 19 November 2004.

[164] http://www.legislation.hmso.gov.uk/acts/acts1988/Ukpga_19880001_en_43.htm#mdiv503, 19 November 2004.

[165] http://www.scotland.gov.uk/consultations/social/dctib-04.asp, 19 November 2004.

- the provision of accommodation to those who need it by reason of age, ill-health, disability, financial hardship or other disadvantage

- the provision of care to the aged, people with a disability, young people or children

- the advancement of animal welfare

- any other purpose intended to provide community benefit.

In future, any organisation wishing to qualify for charitable status will have to show:

first, that its purposes fall within one or more of the categories in the new list and, second, that it will provide public benefit.

It will no longer be the case that some causes are automatically presumed to be charitable.

In the draft Bill, we do not define public benefit. Instead we propose that OSCR should be required to publish guidance setting out how it will interpret public benefit, and how it will decide whether an organisation meets the charity test. It will be expected to consult with the sector before issuing the guidance. The final arbiter of 'public benefit' in Scotland will remain, of course, the Scottish Courts.

(iii) Northern Ireland

Charities in Northern Ireland are only governed by the definition given in Section 506 of the Income and Corporation Taxes Act (1988).

Accordingly "charity" means any body of persons or trust established for charitable purposes only.

(b) Friendly Society

Friendly societies are unincorporated organisations. They are non profit entities that may or may not be registered and spend their benefits for their members. They do not pursue public interest purposes and can therefore not be registered as a charity[166].

To get registered, the friendly society has to meet the following requirements:

- consist of at least seven members

- have statutes that are filed with the central bureau of the register authority

- keep accounting documents

- appoint one or more auditor(s)

- appoint a board of directors

- in case the society wants to pursue commercial activity, it has to seek authorisation via the friendly society sector commission.

- the society must be able to achieve its aim only by the subscription of its members, without eventual donations

(c) Trust

A trust is a structure that allows the founder to submit assets (the so called trust fund) to be administered by trustees in the favour of one or more beneficiaries under conditions set up in the statutes or the constituting document (trust deed).

Assets dedicated to the trust must be clear to identify. The purpose of the trust has to be strictly charitable.

The trust deed has to contain:

- the name of the trust

- the composition of the funds

- the purpose

- the minimum number of trustees as well as the rules concerning their designation and exclusion

- the rights and duties of the trustees

- the methods of conservation of archives and accounts

- the procedure of modifying the trust deed

- the measures to indemnify the trustees

- the designation of the assets in case of the dissolution of the trust

A trust can be registered as a charity, can hold assets and collect funds for the purpose set out in the trust deed and may exercise commercial activity[167].

[166] Alfandari/Nardone, p. 448, n. 3015.

[167] Alfandari/Nardone, p. 471 f, n. 4000 – 4100, 4320.

3.6. Table on definitions in the national laws of EU 15 for different types of entities

Table 2. Definitions in the national laws of EU15 for different types of entities

	Associations	Foundations	NGO	NPO	Charity	Other
Austria	Association	Foundation Public benefit foundation	-	NPO	-	Fund Money Collection
Belgium	Non-profit association Factual association International non-profit association	Foundation Foundation for public utility	NGOD	NPO	-	Company with social purpose
Denmark	Commercial association Non-profit association	Commercial foundation Non-profit foundation	NGOD	No separate legal form	-	-
Finland	Association	Foundation	NGOD	No separate legal form	-	Cooperatives Organisations working for public benefit Money Collection
France	Non-profit association Non-profit association entitled to special governmental recognition	Public utility foundation Corporate Foundation	NGO	NPO	-	Associations that collect donations from the public
Germany	Association	Foundation	NGO	No separate legal form	-	Organisation with charitable benevolent or churchly purpose Civil society
Greece	Recognised association	Private law foundation Non-autonomous foundation	-	-	-	-
Ireland	No separate legal form for association	No separate legal form for foundation	-	No separate legal form	Charity	Trust
Italy	Association	Foundation	No separate legal form for NGO NGOD	No separate legal form	-	Social utility non profit organisation Committee Voluntary organisation Social Co-operatives Fundraising organisation
Luxembourg	Non-profit making association Public utility association	Foundation	NGOD	-	-	-
The Netherlands	Association	Foundation Special forms for foundations	-	No separate legal form	-	Fund
Portugal	Association Not recognised association Association recognised for public utility	Private law foundation Foundation recognised for public utility	NGOD	-	-	-

	Associations	Foundations	NGO	NPO	Charity	Other
Spain	Association Association for public utility	Foundation	NGOD	NPO	-	Religious entities
Sweden	Association Association for general benefit	Ordinary foundation Fund-raising foundation	-	-	-	Civil Society Popular Mass Movement Voluntary sector Ideell Sector
United Kingdom	No separate legal form for association Voluntary association	No separate legal form for foundation	-	Not for profit organisation	Charity	Friendly Society Trust

4. Approaches to unify definitions

4.1. Associations

4.1.1. Background

The diversity in national legislation in defining associations has been subject of an EU level attempt at unification. The European Commission pursued in the early 1990,s a Social Economy Policy to strengthen the cooperatives, mutual societies, associations and foundations sector in Europe. It was meant to help the Social Economy to meet the challenges of the internal market and to incorporate an approach to ensure competitiveness and the demands of the enlargement of the Union. Unfortunately, the related European Commission's multi-annual Programme (1994-1996) on the Social Economy was not adopted by the Council and withdrawn by the Commission in 1997.

Subsequently, as a part of this programme, the European Commission presented a "Proposal for a Council Regulation on the Statute for a European Association"[168] in 1991, which was amended in 1993[169]. Due to the disagreement of the Member States in including the Directive "Involvement of Employees" in the Statute for a European Company, the proposal was not adopted by the Council. Furthermore, the proposal was blocked by uncertainty on the legal basis that still has to be decided by verdict of the European Court of Justice.

Having finally reached an agreement on the "Involvement of Employees" concerning the Statute for a European Company in 2001, culminating in the adoption of the Statute in October 2001, the work on the Proposal on a Statute for a European Association was re-launched in 2002 as "Amended Proposal for a Council Regulation on the Statute for a European Association"[170]. However, the obstacle of the right legal basis is still to be cleared. In addition, as initiative by the European Commission's Presidency is yet to be completed. This should be taken into consideration to widen the discussion that so far has taken place under the first pillar, to a cross-pillar discussion[171].

[168] COM (1991) 273.

[169] COM (1993) 252.

[170] Council of the European Union 14791/02.

[171] JLS, Minutes 12.04.05, p. 2.

4.1.2. Content

Bearing in mind the difficulties highlighted, the content of the Statute for a European Association can only be discussed in the form of the latest proposal[172]. The proposal aims at providing associations with an operational legal instrument allowing them to develop their activities at European level. A European Association under the Proposal is defined as follows:

> Article 1
>
> (Form of the EA)
>
> 1. A company may be set up within the territory of the Community in the form of a European Association (EA) on the conditions and in the manner laid down in this Regulation.
>
> 2. An EA shall be a grouping of natural and/or legal persons the members of which pay contributions or pool their knowledge or their activities on a permanent basis for a non–profit–making purpose, either in the general interest or in order to promote the trade or professional or other interests of its members in the most diverse areas. An EA shall be free to determine the activities necessary for the pursuit of its objectives, subject to the application at national level of the legal and administrative rules governing the carrying on of an activity or the practice of a profession, and provided its activities are compatible with the objectives of the Community, and the public interest. It shall be managed in a disinterested fashion.
>
> 3. The surplus and assets of an EA shall be devoted exclusively to the pursuit of its objectives.
>
> 4. Employee involvement in an EA shall be governed by the provisions of Directive 2002/…/EC.
>
> Article 2
>
> (Legal personality)
>
> 1. An EA shall have legal personality. It shall acquire it on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 9(1).
>
> 2. In each of the Member States, an EA shall enjoy the full legal capacity accorded to companies or firms within the meaning of the second paragraph of Article 48 of the Treaty.
>
> 3. The liability of an EA shall be limited to its assets.
>
> 4. If acts have been performed in an EA's name before its registration in accordance with Article 9(1) and the EA does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal

[172] Therefore, all references to the "Proposal" in the following are meant to relate to the document of 2002: Council of the European Union 14791/02. The full version of the proposal can be found in the Annex.

> entities which performed those acts shall be jointly and severally liable without limit therefore, in the absence of agreement to the contrary.

The European Association is restricted to cross-border activities and therefore does not create its own legal form for national associations in Europe but relates only to this limited impact (Art. 3 of the proposal). Furthermore, the EA may be converted into an association or non-profit organisation governed by the law of the Member State in which its registered office is situated (Art. 47 of the proposal).

These provisions, together with the fact that the form of a European Association is not meant to be an obligatory but a voluntary option for entities active in more than one Member State, confirm that the proposal once adopted, will not solve the problem of defining the legal form of an association in the Member States. Rather it takes national definitions for granted and relies on them. Due to this, the proposal cannot be more than a starting point in giving an idea on the relevant measures to be taken into consideration at the Community level. It is not meant to create a legal form of associations.

4.2. Foundations

4.2.1. Background

An attempt for defining foundations has been made by the European Foundations Centre (EFC). The legal form of Foundations has been included right from the beginning in the EU level approach concerning the Social Economy[173]. Foundations were also mentioned in the preamble of the Proposal for a Council Regulation on the Statute for a European Association of 1993[174]. In the Amended Proposal for the Council Regulation on the Statute for a European Association of 2002[175], any reference to foundations is missing.

Furthermore the general lack of activity in the late 1990s in the Social Economy Policy of the EU referred also to the foundations sector.

The EFC prepared a Model Law for Public Benefit Foundations in Europe in 2003, which was designed as a set of benchmarks and not meant to be directly implemented. In effect, it served as a basis for the Proposal of the Statute for Foundations. The Model Law was based on a study conducted in the Member States and finalised in the Country Profiles, which contained information not only on the legal status of foundations in the national laws but also on register requirements, accountability measures and the tax regime[176].

Based on these results, the EFC started to develop recommendations regarding a European Statute for Foundations. This work corresponded with the statement of the European Commission's Action Plan "Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward" to review the feasibility of a European Statute for Foundations by 2006[177].

The final version by EFC was released in January 2005, with the title "Proposal for a Regulation on a European Statute for Foundations"[178].

4.2.2. Content

The EFC proposal calls for a European Statute for foundations to be regarded as an optional European legal instrument additional to national laws that foundations can choose to facilitate and advance their cross-border work in the EU. The proposal defines a European Foundation as follows:

> Article 1 Form of the European Foundation
>
> 1. A foundation may be set up within the territory of the Community in the form of a European Foundation (EF) on the conditions and in the manner laid down in this Regulation.
>
> 2. An EF shall be an independently constituted and managed body, having the disposal of assets, whether or not in the form of an endowment, which are irrevocably dedicated to public benefit purposes.
>
> 3. An EF shall have minimum assets of 50,000 euros.
>
> 4. An EF must have activities in at least two Member States.
>
> 5. An EF shall have no members. It is governed by a board. Additional organs can be foreseen such as an advisory council(s) or a founders/donors assembly (composed of natural and legal persons).
>
> 6. An EF may be established in perpetuity or for a specified period of time, as expressed by the statutes.
>
> 7. All EF's assets and income shall be used in the pursuit of its public benefit purposes.
>
> 8. An EF shall have legal personality.

As in the Proposal for a Statute for a European Association, the Proposal for a European Statute for Foundation does not create an own legal form for foundations but refers only to the cross-border activities of already existing foundations under

[173] For detailed reference see Chapter 2.4.1.1. on page 78 and Chapter 1.2.6.1. on page 30.

[174] COM (1993) 252, p. 2.

[175] Council of the European Union, 14791/02.

[176] See the different EFC, Country profiles.

[177] COM (2003) 284, p. 22.

[178] EFC, Proposal, p. 1; the full version of the proposal can be found in the Annex.

national law or to foundations with activities in at least two Member States. Furthermore, as the Proposal is meant to create only a voluntary, not an obligatory legal instrument for the Member States, its impact on providing a legal definition for European Foundation in Europe is likely to be small.

4.3. Non-Governmental Organisations

4.3.1. Background

The Council of Europe began as early as in 1986 to discuss the status of non-governmental organisations. The discussion resulted in the publication of "The European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations"[179]. It deals with existing NGOs which already have legal personality in the state where they are headquartered and wish to have this legal personality recognised by other states in which they intend to carry out some of their activities. This work has been supplemented by the publication of the "Fundamental Principles of Non-governmental organisations"[180]. The Fundamental Principles on the Status of Non-Governmental Organisations in Europe are the result of discussions initiated as early as 1996. They began with a series of multilateral meetings and regional conferences held from 1996 to 1998. Based on their results, the Fundamental Principles were drafted and discussed at three open meetings held in Strasbourg on 19 and 20 November 2001, from 20 to 22 March 2002 and on 5 July 2002[181].

4.3.2. Content

Non-Governmental Organisations have been defined by the Council of Europe in its Fundamental Principles as follows:

> 1. NGOs are essentially voluntary self-governing bodies and are not therefore subject to direction by public authorities. The terms used to describe them in national law may vary, but they include associations, charities, foundations, funds, non-profit corporations, societies and trusts. They do not include bodies which act as political parties.
>
> 2. NGOs encompass bodies established by individual persons (natural and legal) and groups of such persons. They may be national or international in their composition and sphere of operation.
>
> 3. NGOs are usually organisations which have a membership but this is not necessarily the case;
>
> 4. NGOs do not have the primary aim of making a profit. They do not distribute profits arising from their activities to their members or founders, but use them for the pursuit of their objectives.
>
> 5. NGOs can be either informal bodies or organisations which have legal personality. They may enjoy different statuses under national law in order to reflect differences in the financial or other benefits which they are accorded in addition to legal personality.

The aim of the Fundamental Principles is to promote national legislation which assists the setting up of NGOs and which, among other things, lays down arrangements for the acquisition of legal personality in the NGO's state of origin, regardless of whether the NGO's work is to be purely national or international as well. National law should provide NGOs with a flexible legal framework, enabling them to meet the recommendations contained in the fundamental principles. All legislation on NGOs should be devised in consultation with representatives of the NGO sector. The Principles seek not to offer model legislation concerning NGOs, but, to recommend the implementation of a number of principles which should shape relevant legislation and practice in a democratic society founded on the rule of law.

5. Recommendations for further development

For the reasons that a large variety of terms are in use in the different Member States, and that there are differences in definitions, there is the need for standardisation of terms in EU15 for the non-profit sector.

This idea is shared, as a general point of view, by the experts of the international non-profit sector. In their opinion, there is the general need for a specific classification system in the non-profit sector. Because of the diversity of this sector, comparisons at the level of the sector as a whole can at best be incomplete and at worst seriously misleading. Countries have major differences in the overall scale and character of their non-profit sectors can nevertheless have significant commonalities with respect to particular types of organisations. Without some systematic basis for grouping information in terms of the component parts of this sector, little progress can be made in describing the sector, let alone conducting serious cross-national research on it[182].

[179] CoE, Convention, p. 1.

[180] http://www.coe.int/T/E/Legal%5Faffairs/Legal%5Fco%2Doperation/Civil%5Fsociety/FP%20version%20finale%20E.asp#TopOfPage, 8 February 2005.

[181] CoE, Status NGO, n. 5-7 EM.

[182] Salamon/Anheier, WP 3, p. 2.

The idea of creating European-wide unitary definitions for the non-profit sector seems to be more than logical.

Following this approach, first of all the scope of a possible definition has to be agreed; especially the type of entities which should be included. It has to be decided if it would be more appropriate to establish a regulation for every type of entity (e.g. for associations, foundations, non-profit organisations, non-governmental organisations, etc.) or if a single regulation is to be preferred, including all associative bodies active in the non-profit sector.

The first solution allows strengthening the differences in the structure of the entities. It is reasonable to rely on this kind of regulation in case that the regulation is not preliminary meant to regulate the non-profit sector itself but aims to define a specific legal form of entity with a specific scope. As an example it can be said that the approaches in defining associations or foundations on European level (see Chapter 2.4 on page 78), focus not on the non-profit activity of the entities but on the cross-border activity of associations and foundations. As a side effect this type of regulation may also concern the non-profit sector at least to the extent that the regulated entities form part of the non-profit sector.

The second solution, the creation of one regulation for all types of entities active in the non-profit sector, emphasises the unitary aspect of a sector regulation. In this case attention has to be paid to unify different types of entities with a common activity scope under one regulation measure. Thus a single regulation for the whole sector helps to avoid loopholes that occur if only certain types of entities are regulated but not the non-profit activity as such.

For regulating the non-profit sector, it should be suggested to create one specific regulation focusing on the non-profit character of the entity's activity instead of relying on regulation that was created with another scope and is only partly applicably to the non-profit sector.

Apart from the extent of a regulation, there is the need to consider two other points: the applicability of Article 48 of the Treaty on the European Union on the associative bodies and the legal basis of a unitary regulation.

Article 48 of the Treaty on the European Union reads as follows:

> Article 48 Treaty on European Union
>
> (1) Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.
>
> (2) "Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Under Art 48 (1) of the Treaty, all companies are granted the same rights as natural persons. According to Article 48 (2) EC Treaty non-profit making entities are excluded form the definition of "company".

In a first instance, it seems that the associative bodies are to be summarised under "non-profit-making" entities by means that Article 48 EC Treaty is not applicable. Nevertheless, the prevailing view is that the provision must be interpreted in the light of its main objective, i.e. the development of business activities of companies within the Common Market. In consequence, "company" can be interpreted within the meaning of the Community law by reference to a criterion hinging on the exercise of an economic activity. In this sense, the term "non-profit-making" means the deliberate intention not to have economic activities, and does not describe the intention not to make a profit. Moreover, Article 48 includes cooperatives as companies, whilst most do not make a profit at the level of the legal entity.

Additionally, non-profit-making bodies engage in economic activities when they produce goods or especially provide commercial services, sold at a price intended to cover at least their production cost, but also non-commercial services provided free of charge at a price unrelated to their cost, the difference coming from financing external to the market. But this is not the case with bodies having no part in economic life (especially religious or spiritually based groups).

Thus, any grouping of individuals which does not seek pecuniary or material gains to be added to the wealth of its associates, but which pursues a non-commercial aim and is of general, philanthropic, sectoral, professional or even private interest, in the widest range of fields, and for the purpose of which engages in economic activities, is a company. In other terms, the entity must not distribute profits among its members to be considered as "company" under Article 48 EC Treaty[183].

Furthermore, a European definition for these entities could be based on Art 95 of the EC Treaty to take the form of a Regulation. In this case it would be considered as the adoption of a measure of alignment of the legal provisions of the Member

[183] Ioakimidis, p. 2 f.

States necessary for the establishment of the internal market. The other possibility is Article 308 of the Treaty as legal basis, which allows the unanimous adoption of any measure needed to achieve one of the objectives of the Community if the Treaty did not provide the requisite powers. This question has been discussed between the Member States for the Statute for an European Associations as well as for the European Company[184] and is now to be answered by the European Court of Justice.

But the decision on the right legal basis cannot be a true obstacle, it is rather to be said that the focus of a regulation should be set to its content; its formal implication may create problems, but they should be solvable.

[184] Bulletin EU 9-2001, 1.3.26.

Chapter 3.
Analysis and Assessment of Existing Systems

Besides the characterisation of the entities forming the non-profit sector, the transparency of the sector depends also on the system ruling these entities. To gain an overview, the national existing systems in terms of registration, accreditation, the size of the non-profit sector as well as monitoring, tax and gambling have to be analysed. The analysis will, after a short introduction of each section, give detailed information on the EU15 countries before summarising the main findings. This is followed by the recommendations for each section.

1. Registration

1.1. Registration System

Generally speaking, the obligation to register an associative body arises with the establishment of this entity and serves to verify the compliance with the establishing requirements. In any case it limits the freedom of association.

But, the freedom of association as assured in Article 11 of the European Convention of Human Rights and Article II-72 of the Treaty establishing a Constitution for Europe is not guaranteed without limitation as can be seen from Article 11 (2) of the European Convention of Human Rights as well as Art. II-112 (3) of the Treaty establishing a Constitution for Europe.

> Art 11 European Convention for Human Rights (ECHR):
>
> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

> Art. II-72 Treaty establishing a Constitution for Europe
>
> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
>
> 2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

> Art. II-112 Treaty establishing a Constitution for Europe
>
> 1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
>
> 2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
>
> 3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

"The refusal to register an association is an interference with Art. 11 ECHR unless it was prescribed by law, pursued one of the legitimate aims and was necessary in a democratic society

- the way in which national legislation enshrines this freedom reveal the state of democracy in the country concerned.

- the exceptions set out in Art. 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Art. 11 (2) exists, the states have only limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both

the law and the decisions applying it, including those given by independent courts."[185]

In other terms, the restriction of the freedom of association through the obligation to register an associative body is in accordance with the guarantees of the freedom of association as long as the restriction itself is meant to seek a lawful purpose and exercised in a democratic way.

Almost all countries therefore have registration systems, even if they differ quite a lot in the embodiment. It may be the case that the entry in the register is a requirement for a newly set up organisation to receive legal personality. To the same degree, the registration may also be an only formal obstacle for an already established organisation that needs to be fulfilled. Furthermore, the registration authority can be vested in courts or in executive agencies that may be specialised in overseeing non-profit organisations or have other functions as well. Besides this, they can operate at the national or at local level.

In the following section, the registration systems of the EU15 are presented in detail before the information is summarised and analysed.

1.2. Country information

The following is meant to give an overview of the national registration systems on a country by county basis. Therefore, the registration authority and the legal impact of the registration, i.e. if the entities gains legal personality by registration have been examined as well as the documents that have to be filed with the authority and the content of the register entry.

1.2.1. Austria

(a) Associations

Registration authority:

Associations can be registered in the register of associations which are held by the local offices of the competent executive authority ("Vereinsbehörde"), within the Ministry of Justice.

Acquisition of legal personality:

The association gains legal personality with the statement of the authority to start operation, Art. 13.1, 2.1. VerG.

Register entry:

According to Art. 16.1 VerG, the register entry at the local office has to contain:

- the name of the competent local authority
- the name of the association
- its registration number of the central associations register
- the establishing date
- the registered seat and the postal address of the association
- the statutory rules concerning the commercial procuration
- the name and function, date and place of birth of the persons in charge of the commercial procuration
- the notification of the certified public accountant
- the rules governing the liquidation of the entity and the name, date and place of birth and address of the persons in charge with the liquidation
- the existence of an information block

Documents to be filled in:

The statutes have to be sent to the competent authority ("Vereinsbehörde"). It must deny the registration in case the statutes contain provisions contradictory to Austrian law.

Public access:

Most of the statutes data are publicly available in the register.

The Ministry of Interior is currently establishing a central association's register ("zentrales Vereinsregister") that is to be accessible online, Art. 18, 19 VerG[186].

(b) Foundations

[185] ECHR, Sidiripoulos and others v. Greece, 10 July 1998, p. 17 f.

[186] http://www.help.gv.at/Content.Node/22/Seite.220300.html#vereinsregister, 23 February 2005.

(i) Private foundations

Registration authority:

No state approval is required but the private foundation must register with the company register ("Firmenbuch") at the local commercial court, Art. 7.1, 12, 13 PStG.

Acquisition of legal personality:

A private foundation receives legal capacity by registration in the register of companies ("Firmenbuch").

Documents to be filled in:

It has to provide the following documents:

- the certified deed or will
- the certified statement of all board members that the assets are at their disposal
- the affirmation of a credit institution that the minimum capital has been deposited and is at the foundations disposal
- the affirmation of the revision of the minimum capital, if required

Register entry:

The register entry must contain:

- the relevant data according to Art. 3 FBG ("Firmenbuchgesetz") law of the company register): the company register number, the name of the entity, its legal form, the registered office, the date of the establishment of the statutes, the names and date of birth of the representatives, the duration of the entity if it is limited, the names of the persons in charge with the liquidation, restraints on disposal, any other entry intended by law
- the purpose of the foundation
- the date of the deed of foundation and every modification
- in case of a board of trustees: the name and date of birth of the members of the board of trustees

Public access:

The company register is a public register.

(ii) Public benefit foundations

Registration authority:

There is a register for public benefit foundations held at the Ministry of Interior, Art. 40 BSFG.

Acquisition of legal personality:

The deed of the public benefit foundation has to be approved by the competent foundation authorities, Art. 5 BSFG; it acquires legal personality with the approval, Art. 5.4. BSFG.

Documents to be filled in:

The deed has to be filed for the approval.

Register entry:

The register entry contains the name, address and registered office of the foundation, the purpose, the beneficiaries, the names and addresses of the board members and the modifications of the statutes.

Public access:

The register is available to the public.

(c) Funds

There is a register for funds at the Ministry of Interior (see public benefit foundations under Chapter 3.1.2.1. (b)(ii) on page 85).

1.2.2. Belgium

(a) Associations

Registration authority:

Non-profit associations have to make a deposit at the clerk's office of the local commercial court at the legal seat of the association

If they meet certain size criteria, they have also to register with the National Bank of Belgium

"Banque National de Belgique" (loi du 1921-06-27 and loi du 2002-05-02).

The "Banque-carrefour des Entreprises (BCE)" was created by the law from January 16th 2003. It is composed of a register for all relevant data concerning the identification of the companies. Therefore it takes over the data from the national register of legal persons, the register of commerce, of the VAT and the social services. The data are centralized and standardized at the BCE and accessible for all public services.

The BCE provides every registered company with a unique identification number, valid for all public services[187].

The following organisations have to register with the BCE (Art. 4 Loi du 2003-01-16)

- incorporated entities with legal seat in Belgium
- incorporated entities with foreign legal seat that have a registered office in Belgium or that are forced by law to register with the BCE
- all natural or legal persons or associations that in Belgium:
  - undertake commercial or hand-crafted work
  - are subject to social security as an employer
  - are subject to VAT
  - conduct intellectual professions, freelanced work or provide independent services
- units of these organisations as far as their registration is necessary for the execution of the Belgium law

Acquisition of legal personality:

Non-profit associations acquire legal personality with the deposit at the commercial court.

Documents to be filled in:

The following documents have to be filed with the local commercial court:

- the statutes
- acts relating to the appointment of the administrators
- a copy of the register of the members

Register entry:

The local commercial court holds a dossier of every association for public utility containing:

- the statutes
- the relevant acts for the nomination and cessation of administrators, representatives, cooperatives and commissioners
- a copy of the register of members (hold by the board)
- the decisions related to the nullification or dissolution
- the annual accounts

The register entry, according to Art. 6 Loi du 2003-01-16 contains:

- the name of the organisation
- the address of its registered office
- the legal form
- the legal position
- the date of creation and cessation
- the identification data of the founder, mandatory and the authorised representatives
- the economic activities of the entity
- any other basic information to identify the entity
- authorisations or licenses that have been given to the entity
- references to the deposits at the commercial court as well as to those of the annual accounts at the Banque nationale de Belgique

Public access:

The documents have to be published in the official journal.

(b) Foundations

(i) Private Foundations

[187] See Annex 2.2.6.a.

Registration authority:

Private foundations have to register with the local commercial court.

If they meet certain size criteria, they have also to register with the National Bank of Belgium "Banque National de Belgique" (loi du 1921-06-27 and loi du 2002-05-02).

Foundations that gained legal personality after January 1st 2004 are immediately obliged to register with the The "Banque-carrefour des Entreprises (BCE)" to get the unique identification number.

Foundations that gained legal personality before January 1st 2004 were granted a delay to adjust the register requirement with the BCE (Art. 5 - 7 Arrêté royal du 2003-04-02 see Appendix, III).

Starting from January 1st 2005 foundations have to use the identification number provided by the BCE in all relations with the administrative and legal authorities as well as in the relations between themselves[188].

Acquisition of legal personality:

The private law foundation acquires legal personality with the deposition of the statutes and of the nomination act of the administrators at the local commercial court at the legal seat of the foundation.

Documents to be filled in:

See Associations

Register entry:

See Associations

Public access:

See Associations

(ii) Foundations for public utility

Registration authority:

Private foundations have to register with the local commercial court.

Ministry of Justice is the authority in charge of holding the register of the foundations for public utility.

Acquisition of legal personality:

The foundation for public utility acquires legal personality with the recognition by royal decree, Art. 27.3, 31 § 2 Loi du 1921-06-27.

Documents to be filled in:

The foundations have to hand in their statutes.

Register entry:

The Ministry of Justice holds a dossier for every foundation of public utility containing:

- the statutes and their modifications
- the acts of nomination, revocation and cessation of the administrators and the representatives
- the annual accounts
- in the case of the conversion of a private foundation to a public utility foundation the related documents
- the decisions and acts related to the dissolution or liquidation of the foundation

Public access:

All these documents except the annual accounts have to be published in the gazette ("Moniteur belge"), Art. 31 § 4 Loi du 1921-06-27.

(c) Company with social purpose

The company with social purpose has to be registered with the register for legal persons and have to make the deposit at the clerk's office at the local commercial court (respectively the BCE) like every incorporated company, Art. 2 § 2, Art. 661, 664 Commercial Code.

[188] see Annex 2.2.6.a.

1.2.3. Denmark

(a) Associations

(i) Non-profit associations

There is no register for non-profit associations. In fact, they gain legal personality without registration[189].

(ii) Commercial associations

Registration authority:

Commercial associations have to register with the Danish Commerce and Companies Agency (DCCA), an agency under The Danish Ministry of Economic and Business Affairs[190].

Acquisition of legal personality:

The commercial associations become incorporated with the registration.

Documents to be filled in:

The association has to fill in the information and documents that must be filed under company law and related legislation in order to secure the incorporation, re-registration and striking-off of companies and other certain types of business.

Register entry:

The register entry contains the statutes, the identity of the board members, accountants and directors.

Public access:

The information is publicly available.

(b) Foundations

(i) Non-commercial foundations

Registration authority:

Within three months after its establishment the foundation must register with the local foundation authority, the "Civilretsdirektorat" on behalf of the Minister of Justice, Art. 36 FFL, and the local tax authorities.

Acquisition of legal personality:

A non-commercial foundation receives legal personality at the moment of its establishment.

Documents to be filled in:

The non-commercial foundation has to fill in the statutes of the foundation as well as a list of board members to the local foundation authority and the tax authority.

Public access:

No information available.

(ii) Commercial foundations

Register authority:

Commercial foundations have to register with the Danish Commerce and Companies Agency (DCCA), an agency under The Danish Ministry of Economic and Business Affairs.

Acquisition of legal personality:

Commercial foundations acquire legal personality with registration.

Documents to be filled in:

The foundation has to fill in the information and documents that must be filed under company law and related legislation in order to secure the incorporation, re-registration and striking-off of companies and other certain types of business.

Register entry:

The register entry contains the statutes, the identity of the board members, accountants and directors.

Public access:

[189] Alfandari/Nardone, p. 81 n 1515, p.83, n. 2005.

[190] http://www.eogs.dk/sw285.asp, 1 March 2005.

The information is publicly available.

1.2.4. Finland

(a) Associations

Registration authority:

Associations can register with the "National board of patents and registration".

Acquisition of legal personality:

Associations acquire legal personality by registration with the National Board of Patents and Registration.

Documents to be filled in:

The associations have to fill in:

- a declaration for registration of an association (basic declaration)
- the charter and the rules of the association

Register entry:

The register entry should be based on the declaration for registration, that shall give the full name, address, domicile and personal identity code of the chairman of the committee and of each person authorised to sign in the name of the association as well as the limitation concerning the right to sign in the name of the association.

Public access:

The register of associations is available to the public.

(b) Foundations

Registration authority:

Foundations have to register with the "National Board of Patents and Registration".

Acquisition of legal personality:

Foundations acquire legal personality with registration.

Documents to be filled in:

The foundation has to send in a notice to the "National Board of Patents and Registration" containing (Section 6 (2) Foundations Act):

- the full name, citizenship, place of residence and Finnish social security code or, in its absence, the date of birth of the chairman and each member and deputy member of the board of trustees
- confirmation by the trustees and certificate of the auditors stating that the movable property bestowed on the foundation is in the possession of the trustees
- a certified copy of a deed of convenience regarding the real property bestowed on the foundation, which shall be signed also by the person who has received the property on behalf of the foundation
- the full name, citizenship, place of residence and Finnish social security code or, in its absence, the date of birth of any person authorised to sign in the name of the foundation either by himself or together with another person
- the postal address of the foundation

Register entry:

According to Section 7 Foundations Act, the register of foundations shall contain:

- the name, purpose and postal address of the foundation as well as the place of its registered office;
- the full name, citizenship, place of residence and social security code or date of birth of the chairman and each member and deputy member of the board of trustees of the foundation and of each person authorised to sign the name of the foundation and, if the members of the board of trustees of another foundation or the members of the board of directors of a company or other establishment are to function as the trustees of the foundation, a statement thereof as well as the registration number of the organisation or company and the register in which it is registered.

Public access:

The register is available to the public.

1.2.5. France

(a) Associations

(i) Non-profit associations

Registration authority:

There is no general register for non-profit associations.

The local prefecture is the competent authority for all matters concerning associations.

Acquisition of legal personality:

Associations gain legal capacity and personality by submitting a statement to the prefecture and publishing a notice in the official journal. Thereby they gain the status 'declared association'. It is a voluntary process.

(ii) Associations entitled to special governmental recognition

Registration authority:

For registered non-profit associations with aid, charitable or research purpose the registration authority is the local public authority that gives permission to accept donations, bequests and legacies.

For non-profit associations with recognised public benefit purpose it is the "Conseil d'Etat" that gives a decree recognising this status.

Acquisition of legal personality:

Associations entitled to special governmental recognition gain legal personality with the recognition.

Documents to be filled in:

Non-profit association with recognised public benefit purpose have to submit their statutes to the "Conseil d'Etat".

Register entry:

No information available.

Public access:

The Decree and the statutes of the non-profit association with recognised public benefit purpose are published in the official journal.

(b) Foundations

(i) Public utility foundations

Registration authority:

There is no general register for foundations. The "Conseil d'Etat" is the authority in charge for all matters concerning public utility foundations.

Acquisition of legal personality:

Public utility foundations gain legal capacity with the recognition for public utility by a Decree of the "Conseil d'Etat", signed by the Prime Minister.

Documents to be filled in:

The foundation has to submit its statutes to the "Conseil d'Etat".

Register entry:

Public access:

The Decree and the statutes of the foundation are published in the official journal.

(ii) Corporate foundation

Registration authority:

The local executive authority is in charge to give authorisation to all entities that seek this status, but it is not a register.

Acquisition of legal personality:

The corporate foundation gains legal capacity with the publication of the administrative authorisation in the official journal.

Public access:

The authorisation is published in the official journal.

1.2.6. Germany

(a) Associations

Registration authority:

Associations can register with the local civil courts.

Acquisition of legal personality:

Associations gain legal personality with registration.

Documents to be filled in:

The association has to submit the statutes, signed by a minimum of 7 members, and the documents on the appointment of the governing board.

Register entry:

There is no information available.

Public access:

The associations register is available to the public.

(b) Foundations

Registration authority:

Foundations have to register with the local executive authorities.

Acquisition of legal personality:

Foundations acquire legal capacity with the acknowledgment of the local executive authority.

Documents to fill in:

The foundation has to submit its deed to the authority.

As far as other requirements are concerned, it must be noted that foundations are governed by the laws of the federal states. Therefore, there is no unified system concerning the registration process.

In Bavaria acceptance by the local administrative authority ("Bezirksregierung") is needed. The acknowledgment has to be published in the official gazette ("Bayerischer Staatsanzeiger"). The publication must contain the name, the legal status, the registered seat, the purpose, the organs, the representatives, the name of the founder, the date of establishment and the address of the foundation.

1.2.7. Greece

(a) Associations

Registration authority:

Associations have to register with the associations register held by the local court.

Acquisition of legal personality:

Associations acquire legal personality with registration.

Documents to be filled in:

They have to fill in the deed, the names of the members of the administration and the statutes, signed by the members.

Register entry:

No information was available in English.

Public access:

No information was available in English.

(b) Foundations

Registration authority:

There is no foundations register. The competent authority for a foundation is the particular minister with respect to the purpose of the

foundation; for the major part of public benefit foundations it is the Minister of Finance.

Acquisition of legal personality:

The foundation gains legal personality with publication of the governmental decree approving the founding act.

Documents to be filled in:

The foundation has to submit the founding act to the competent foundation authority.

Register entry:

There is no information available in English.

Public access:

The approval is published in the official journal.

(c) NGO

NGOs can register with the NGOs' Official Record for the Development Assistance Committee (DAC) of the Hellenic Ministry of Foreign Affairs[191].

1.2.8. Ireland

(a) Associations

Note: The register system described below applies to associations and foundations as far as they take the form of companies[192].

Registration authority:

Companies (companies limited by guarantee, single member companies and unlimited companies), limited partnerships and societies (friendly societies and industrial societies/cooperatives) have to register with the Company Registration Office.

Acquisition of legal personality:

The entities acquire legal personality with the registration.

Documents to be filled in:

The entities have to submit:

- the memorandum of association containing the name and objects of the company, the fact that it is guarantee is limited
- the articles of association that set out the rules under which the company proposes to regulate its affairs
- a special application form to give details of the company name, its registered office, details of secretary and directors, their consent to acting as such, the subscribers and details of their shares. It incorporates a statutory declaration that the requirements of the Companies Acts have been complied with, and as to the activity which the company is being formed to engage in.

Register entry:

Public access:

The company register is a public register.

(b) Foundations

See Associations under Chapter 3.1.2.8. (a) on page 92.

(c) Charities

Registration Authority:

At the moment there is no charity register in Ireland.

There is a Draft Charities Law in preparation which is supposed to establish a register.

The intention is that the regulatory body to be set up under the new legislation will be responsible for compiling, publishing and maintaining a

[191] http://www.mfa.gr/english/foreign_policy/cooperation/creation.html, 10 June 2005.

[192] http://www.cro.ie/template_generic.asp?ID=3&Level1=1&Level2=1&Level3=0&Level4=0&Level5=0, 30 November 2004.

register of "Registered Charities". All charities will be obliged to register with the regulatory body[193].

1.2.9. Italy

(a) Associations

Registration authority:

The register is kept at the local prefecture "Prefettura", the office that represents the national authority at local level, for countrywide acting organisations and by the local administration for regional acting organisations.

Acquisition of legal personality:

Associations acquire legal personality by registration.

Documents to be filled in:

They have to specify the constitutional act, the recognition act, the name, purpose, registered seat, duration and assets of the organisations as well as the names of the members of the board of directors.

Register entry:

No information was available.

Public access:

No information was available.

(b) Foundations

See Associations under Chapter 3.1.2.9. (a) on page 93.

(c) NGO

Registration authority:

NGOs for Development can register with the Ministry of Foreign Affairs[194].

Other specific registers are held by the Ministry of the Interior and the Ministry of Labour and the Regions.

(d) ONLUS

Registration authority:

Social utility non-profit organisations (ONLUS) have to register with the 'ONLUS registration office'.

(e) Voluntary Organisations:

Regions/provinces can regulate voluntary organisations and can keep registers on them. Registration is a prerequisite for accessing public donations and for stipulating conventions and being granted tax benefits.

1.2.10. Luxembourg

(a) Associations

Registration authority:

Non-profit making associations have to register with the RCS (Registre de Commerce et des Sociétés).

Acquisition of legal personality:

Non-profit making associations acquire legal personality with the publication of their statutes and a list containing the identity of the administrators in the "Mémorial", the official gazette of Luxembourg.

Documents to be filled in:

According to Art. 10 Loi du 21.04.1928, a list of the association's members (containing identity, nationality and residence) has to be deposited at the office of the local civil court.

Register entry:

No information was available.

Public access:

No information was available.

[193] http://www.pobail.ie/en/CharitiesRegulation/ExternalReportonPublicConsultation/d7781.en.v3.0.t4.PDF, 23 November 2004.

[194] http://www.esteri.it/ita/4_28_66_75_247.asp, 18 November 2004.

(b) Foundations

Registration authority:

Foundations have to register with the RCS (Registre de Commerce et des Sociétés).

To be established the foundation has to seek approval by the Ministry of Justice via Grand Ducal Decree.

Acquisition of legal personality:

Foundations acquire legal capacity when their statutes are approved by Grand Ducal

Decree.

Documents to be filled in:

The foundation has to submit the authentic act or will and the statutes to the Ministry of Justice.

Public access:

The statutes have to be published in the "Mémorial", the official gazette of Luxembourg.

1.2.11. The Netherlands

(a) Associations

Registration authority:

Associations that are established with their articles of association drawn up by a civil notary, have to be registered in the Chamber of Commerce register of commerce.

For associations with limited authority under the law, i.e. where the articles of association are not drawn up by a notary, the registration is not compulsory.

Acquisition of legal personality:

Associations acquire legal personality with the establishment of its deed.

Documents to be filled in:

They have to filed with the following information[195]:

- Business name or names and statutory name
- Place of business address and correspondence address
- Individual Chamber of Commerce registration number
- information on the management board, the supervisory board and any authorized representatives including their name, address, personal data and extent of authority
- All other registered officers (those with power of attorney) together with the extent of their authority
- Any trustee (in the case of insolvency)
- Date of establishment
- Legal form
- Description of company (especially if it is conducting business activity)
- Number of persons employed
- the articles of associations certified as a true copy by a notary

Register entry:

No information was available.

Public access:

The register is publicly available.

(b) Foundations

Registration authority:

All foundations should be registered in the register of commerce "handelsregister". The local Chamber of Commerce and Industry "Kamer van Koophandel" keeps the foundation register.

Acquisition of legal personality:

[195] http://www.kvk.nl/artikel/artikel.asp?artikelID=16050, 8 March 2005.

Foundations acquire legal personality with the certifications of its deed/will by a notary.

Documents to be filled in:

They have to filed with the following information[196]:

- Business name or names and statutory name
- Place of business address and correspondence address
- Individual Chamber of Commerce registration number
- information on the management board, the supervisory board and any authorized representatives including their name, address, personal data and extent of authority
- All other registered officers (those with power of attorney) together with the extent of their authority
- Any trustee (in the case of insolvency)
- Date of establishment
- Legal form
- Description of company (especially if it is conducting business activity)
- Number of persons employed
- the articles of associations certified as a true copy by a notary

Register entry:

No information was available.

Public access:

It is a public register.

(c) NPO and Funds

There is no special register for NPO or funds but they are registered as associations or foundations.

[196] http://www.kvk.nl/artikel/artikel.asp?artikelID=16050, 8 March 2005.

1.2.12. Portugal

(a) Associations

(i) Private Law Association

Registration authority:

To establish an association, the constituting act and the statutes have to be sent to a notary who publishes it with the administrative authority as well as the Public Prosecution Office.

Associations have to register with the National Register of Collective Entities "Registo Nacional de Pessoas Colectivas – RNPC".

Acquisition of legal personality:

Private law associations gain legal personality according to art. 158.1 CC by publishing the constituting act and the statutes in the official gazette.

Documents to be filled in:

They have to submit the constituting act and the statutes to the authorities.

Register entry:

No information was available.

Public access:

An extract of the documents is published in the official gazette.

(ii) Associations recognised for public utility

Registration authority:

Associations recognised for public utility are registered in a special register held by the notary.

The Prime Minister is the authority in charge to decide on the recognition of associations for public utility.

Public access:

The declaration of the Prime Minister is published in the official gazette.

(b) Foundations

(i) Private Law foundations

Registration authority:

The competent authority for all matters concerning foundations is the local executive authority.

Foundations have to register with the National Register of Collective Entities "Registo Nacional de Pessoas Colectivas – RNPC".

Acquisition of legal personality:

Private law foundations gain legal personality by recognition by the competent administrative authority.

Documents to be filled in:

Private law foundations have to submit the constitutional act and statutes to the competent administrative authority.

Register entry:

No information was available.

Public access:

The documents have to be published in the official gazette.

(ii) Foundations recognised for public utility

Foundations recognised for public utility are subject to the same registration system as associations recognised for public utility; see under Chapter 3.1.2.12. (a)(ii) on page 95.

(c) NGOs

Registration authority:

There is the possibility for NGOs to be registered by several ministries. There are different systems by each ministry.

NGOs with the purpose of cooperation of development can register with the "Instituto Português de Apoio ao Desenvolvimento" (IPAD), the Institute of aid and development of the ministry of foreign affairs[197].

NPOs with an environmental purpose can register with the "Instituto do Ambiente" (IA), the Institute of Environment of the Ministry of Environment[198].

Acquisition of legal personality:

NGOs for Development acquire legal personality under the general terms of law.

Register entry:

The register entry contains data of the NGO for Development: the name and address as well as the email.

Documents to fill in:

NGOs for Development have to provide the following documents with their request:

- Deed of association
- Statutes
- A copy of the official gazette
- The plan for activities for the current year
- A document expressing the financial means of the organisation

Public access:

The register of NGOs for Development is publicly available.

1.2.13. Spain

(a) Associations

Registration authority:

[197] http://www.ipad.mne.gov.pt/ongs/ongs.htm, 10 November 2004.

[198] http://www.iambiente.pt/portal/page?pageid=33,32142&dad=govportalia&schema=GOVPORTALIA&idmenu=6&id_doc=0, 10 November 2004.

Associations have to register with the National Registry of Associations.

Acquisition of legal personality:

There was no information available.

Documents to be filled in:

They have to provide the following documents with their request:

- deed of associations
- copies of the identity card of the promoters
- the statutes

Register entry:

There was no information available.

Public access:

The register is publicly available.

(b) Foundations

Registration Authority:

Nationwide active foundations have to register with the Registry of Foundations held by the Ministry of Justice.

Foundations that work on and have a regional scope have to register with the regional executive authority.

Acquisition of legal personality:

Foundations receive legal personality after the deed of incorporation has been registered in the Register of Foundations.

Documents to be filled in:

There was no information available.

Register entry:

There was no information available.

Public access:

It is a public register.

(c) NGO

There is the possibility for NGOs for Development to get registered with the "Agencia Española de Cooperación Internacional (AECI)", an institute of the Ministry of Foreign Affairs.

Acquisition of legal personality:

Documents to be filled in:

The NGOs for Development have to submit the following documents:

- Verification of the compliance with Art. 32 of the Law 23/1998
- A request for being inscribed, signed by the representatives
- A copy of the constitutional act, the statutes, the certificate of inscription with the Public Register in Spain as well as a document describing the composition of the Board
- A sworn declaration that the entity has not contravened the rules of subsidies
- Verification document that indicates the amount of public subsidies received during the last five years, signed by the representatives

Register entry:

The register entry has to contain[199]:

- constitutional act
- object and aims of the organisation
- administrative organs and their composition
- registered seat

[199] http://www.boe.es/boe/dias/1999-06-26/pdfs/A24396-24398.pdf, 25 November 2004.

- declared list of the entities from which it has received aids in the previous five years
- rules for the extinction and dissolution of the organisation as well as the liquidation
- statement that the organisations has not been sanctioned while applying for public aid
- any modification of the data described above
- any other data if required by law

Public access:

The register is publicly available.

1.2.14. Sweden

(a) Associations

(i) Associations

No information was available in English.

(ii) Associations for general benefit

Registration authority:

Associations can be recognised for general benefit by the Tax Authorities.

Acquisition of legal personality:

There was no information available.

Documents to be filled in:

There was no information available.

Register entry:

There was no information available.

Public access:

There was no information available.

(b) Foundations

Registration authority:

Foundations that are required to close their accounting records with annual reports according to the Bookkeeping Act, the "large foundations"[200] as well as foundations that have a register requirement installed in their deed have to be registered with the County Administration Board, "länsstyrelsen".

Acquisition of legal personality:

Ordinary foundation gain legal personality by being founded, thus by the transfer of the property according to the deed, independent from any registration.

The fund-raising foundation is not required to have an initial donation to be considered a foundation; a public call for donations suffices for the foundation to have legal capacity.

Documents to be filled in:

The foundation has to provide the following information:

- the name, address and phone number of the foundation
- the name, personal number, address and phone number of the board members or
- the name, company, organisation number, address and phone number of the administrator
- the legal seat of the board respectively in case of the linked administration the legal seat of the administrator
- the deed

Before starting commercial activity, the board has to notify to the authority of the company name under which it shall take place, as well as the type of the planned activity.

Register entry:

There was no information available.

[200] According to Wijkström/Einarsson, p. 34 a large foundation is considered to be one with assets of more than ten basic amounts, geared to the price index (in 2002 approximately SEK 35.000).

Public access:

The Country Administration Board has to announce the registration entry to the "Post- och Inrikes Tidningar", the Swedish legal bulletin.

(c) NPO

There is no general registration requirement for non-profit organisations which appeal to public generosity, but if those organisations want to conduct business activity they have to register with the Trade Register like any other company[201].

1.2.15. United Kingdom

(a) Associations

Registration authority:

Every organisation that wants to be incorporated has to register with the Companies House or with the Financial Service Authorities (only for Industrial Provident Societies).

Acquisition of legal personality:

A new company comes into existence when the Registrar of Companies issues a certificate of incorporation.

Documents to be filled in[202]:

- The Memorandum of association; this document sets out: the company's name, where the registered office of the company is situated (in England, Wales or Scotland); and its objects. The object of a company may simply be to carry on business as a general commercial company. Other clauses to be included in the memorandum depend on the type of company being incorporated.
- The Articles of Association; setting out the rules for the running of the company's internal affairs
- The personal details of its directors, company secretary and members.

Register entry:

Public access:

The register is publicly available.

(b) Foundations

Foundations that want to be incorporated are subject to the same registration system as associations, see under Chapter 3.1.2.15. (a) on page 99.

(c) Charities

(i) England and Wales

Registration Authority:

Charities have to register with the Charity Commission of England and Wales.

It is possible for one charity to be registered with both the Company House and the Charity Commission.

Public access:

The register is publicly available.

(ii) Scotland

Registration authority:

Under the current law, there is no charity register in Scotland. But organisations that want to benefit from the tax status of charitable organisations have to register with the Inland Revenue Charities.

Under the "Draft Charities and Trustee Investment (Scotland) Bill" all bodies wishing to operate as charities in Scotland will be required to register with Office of the Scottish Charity Regulator, which will be established under the Bill.

Acquisition of legal personality:

Documents to be filled in:

A charity that has registered with the Charity Commission of England and Wales need only notify the Inland Revenue Charities of its charity registration number and the details requested for all organisations (the full address, including postcode, to which all communications should be

[201] JAI/D2/NSK (2004)8301, answer Sweden, question 1.

[202] http://www.companieshouse.gov.uk/about/gbhtml/gbf1.shtml, 22 November 2004.

sent, and the date on which its accounting period ends).

Entities that are not registered with the Charity Commission of England and Wales, have to provide the following information[203]:

- the signed and dated governing instrument
- details of activities, along with copies of any literature that explains its work, and the date on which its accounting period will end
- the full address, including postcode, to which all communication should be sent
- the date on which its accounting period ends.

Register entry:

No information was available.

Public access:

There was no information available.

(iii) Northern Ireland

There is no charity register in Northern Ireland. But organisations that want to benefit from the tax status of charitable organisations have to register with the Inland Revenue Charities (see Scotland under Chapter 3.1.2.15. (c)(ii) on page 99).

1.3. Summary and Table on National Registration Systems

The different registration systems as presented above can be reduced to Table 3, on page 101, concerning the basic information for every country's registration system.

The table is meant to give a quick overview of the different registration systems. It is therefore not possible to give complete information in the table; it cannot replace the detailed information given in the country information above.

[203] http://www.inlandrevenue.gov.uk/charities/chapter_2.htm#23, 19 November 2004.

Table 3. Registration Systems

Country	Type of entity	Registration Authority	Acquisition of legal personality with	Obligation to register	Documents to be filled in	Public access
Austria	Association	Local office of executive authority under Ministry of Interior	Registration	No	Statutes	Yes; personal data on special request
	Foundation	Local commercial court	Registration	Yes	Certified deed or will Certification of the disposability of the assets Affirmation of the deposit of the capital Affirmation of the revision of the minimum capital if required	Yes
	Foundation for public benefit/Funds	Ministry of Interior	Approval of deed	Yes	Deed	Yes
Belgium	Association	Local commercial court	Registration	Yes	Statutes Acts of the appointment of administrators Register of members	Publication in official gazette
	Private Foundation	Local commercial court	Registration	Yes	Statutes Acts of the appointment of administrators Register of members	Publication in official gazette
	Foundation for public utility	Ministry of Justice	Royal Decree	Yes	Statutes	Publication in official gazette
	Company with social purpose	Local commercial court	Registration	Yes		
Denmark	Non-profit association	No register	Establishment	-	-	-
	Commercial association	Danish Commerce and Companies Agency	Registration	Yes	Statutes Additional information	Yes
	Non-commercial foundation	Local authority	Establishment	Yes	Statutes List of board members	Yes
	Commercial foundation	Danish Commerce and Companies Agency	Registration	Yes	Statutes Additional information	Yes

Country	Type of entity	Registration Authority	Acquisition of legal personality with	Obligation to register	Documents to be filled in	Public access
Finland	Associations	National board of patents and registration	Registration	No	Basic declaration Statutes Rules of association	Yes
	Foundations	National board of patents and registration	Registration	No	Personal data of board Personal data of representatives Affirmation of property Address of foundation	Yes
France	Non-profit association	No register	Submitting a statement to prefecture	-	-	-
	Association with special recognition	Local public authority Conseil d'Etat	Recognition	Yes	Statutes	Publication in official gazette
	Public utility foundation	Conseil d'Etat	Recognition	Yes	Statutes	Publication in official gazette
	Corporate foundation	No register	Authorisation	No		Publication in official gazette
Germany	Association	Local civil court	Registration	No	Statutes Appointment of board	Yes
	Foundation	Local executive authority	Registration	Yes	Deed information required by local law	Local law
Greece	Association	Local court	Registration	Yes	Deed Statutes Names of board members	
	Foundation	No register	Approval of deed	-	-	-
	NGO	Development Assistance Committee of Ministry of Foreign Affairs		No		
Ireland						
Italy	Association	Local prefecture/ local administration	Registration	No	Deed Recognition act Data on entity Name of board members	
	Foundation	Local prefecture/ local administration	Registration	No	Deed Recognition act Data on entity Name of board members	
	NGO	Specific Ministries		No		

Country	Type of entity	Registration Authority	Acquisition of legal personality with	Obligation to register	Documents to be filled in	Public access
	ONLUS	ONLUS registration office		Yes		
	Voluntary organisation	Authority of the region; depends on regional law				
Luxembourg	Association	Register of Commerce and entities	Publication of statutes	Yes		Publication in official gazette
	Foundation	Register of Commerce and entities	Approval of statutes	Yes		Publication in official gazette
The Netherlands	Association	Register of Commerce the Chamber of Commerce	Establishment	Depends on form	Deed Data on entity Data on board members	Yes
	Foundation	Register of Commerce the Chamber of Commerce	Certification of deed	Yes	Deed Data on entity Data on board members	Yes
Portugal	Private law association	National Register of Collective Entities	Publication of deed/statutes in gazette	Yes	Constituting act Statutes	Publication in official gazette
	Association for public utility	Notary				Publication in official gazette
	Private law foundation	National Register of Collective Entities	Recognition by administrative authority	Yes	Constituting act Statutes	Publication in official gazette
	Foundations for public utility	Notary				Publication in official gazette
	NGO for Development	Ministry of Foreign Affairs	Under general terms of law	No	Deed Statutes Copy of official gazette Document on financial means	Yes
Spain	Association	National Register of Associations		Yes	Deed Copies of the identity card of the promoters Statutes	Yes
	Foundation	Ministry of Justice; regional executive authority	Registration	Yes		Yes
	NGO for Development	AECI under Ministry of Foreign Affairs		No		Yes
Sweden	Association	No information in English				
	Foundation	County Administration Board	Establishment	Depends on form	Deed Data on entity Data on board members and administrators	Publication in official gazette

Country	Type of entity	Registration Authority	Acquisition of legal personality with		Obligation to register	Documents to be filled in	Public access
United Kingdom	Association	Companies House	Registration		No	Articles of association Memorandum of association Personal Data on directors	Yes
	Foundation	Companies House	Registration		No	Articles of association Memorandum of association Personal Data on directors	Yes
	Charity	E/W	Charity Commission		Depends on size		Yes
		S	Office of the Scottish Charity Regulator to be established				
		NI	No charity register; Inland Revenue Charities		No	Depends on entity	

2. Accreditation

2.1. Accreditation System

Apart from registration systems, many countries use a system that can be called accreditation. That category is meant to include certifications that are given to entities that meet certain criteria. The certifying body can be an authority or a private organisation, e.g. an umbrella organisation. The scope of the accreditation is to "label" the participating organisations. That means that it certifies the adherence to the standards set up by these organisations. The general acceptance of the label depends on the sincerity and credibility of the certificating body.

As can be seen from the detailed country information, it is a smooth transition from registration to accrediting systems to favourable tax systems. The main distinction between registration systems and accrediting systems can be made in the legal background: generally speaking a registration system is foreseen by law, it is in most cases obligatory and the entities gain a legal status by registration. The accreditation system is established by the initiative of the interested parties to label their competence and is laid on statutory or contract basis. The subscription is voluntary and the status gained by the subscription is not a legal status but a certificate; in some cases it may also lead to the granting of funds or subsidies. There are countries that prefer having accrediting systems instead of governmental regulation as they believe in the self regulation of the sector.

To give an overview of the huge variety of national accreditation systems, the main focus of the analysis has been set on the organisational form of the accrediting body, the type of entitled entities, the eligibility criteria for entities that seek the certification as well as the status they achieve by it. Besides, the public availability was considered.

2.2. Country information

2.2.1. Austria

(a) Österreichisches Spendengütesiegel (OSGS)

Accrediting body:

The "Österreichisches Spendengütesiegel" (OSGS) is a private association of Austrian umbrella-organisations of NPOs.

Entitled entity:

NPOs that meet the following requirements[204] are entitled to apply:

The organisation:

- works for a public benefit, benevolent or church purpose in accordance with §§ the 34 ff "Bundesabgabenordnung" (BAO), the Federal Tax Code
- has a regulated accounting system with internal control
- has its registered office in Austria; the organisation possesses an Austrian or a European legal status
- has a profile which gives information on legal status, goals and purposes and designates representatives and committees, which decide on the use of the funds
- has a management responsible to an independent super ordinate control organ that may not have personal financial interest in the organisation
- the personal integration of members of the management and of the control organ with commercial enterprises, which stand in a business relationship with the organisation, has to be disclosed
- decides in own responsibility on the use of its funds or participates in the decision-making on the use
- has an internal control system
- has its own bank account
- has its own web page publishing the profile and the annual report

Eligibility criteria:

- The organisation has to conduct fundraising in a true and moral manner
- The application of funds is dedicated to the public benefit, benevolent or church purposes named in the profile; the application has to be efficient and economical

[204] See Annex 2.1.6.c, Standards for fundraising organisations with the OSGS.

- The organisation provides an annual report on its activities to the public

Status:

The legal entities that fulfill the criteria are allowed to use the Seal of Approval of the OSGS.

Public access:

A list of the organisations entitled to the Seal is published on the OSGS website[205].

(b) Austrian Development Agency (ADA)

Accrediting body:

ADA is the operational unit of the "Austrian Development Cooperation" and "Cooperation with Eastern Europe" (ADC). It is a private organisation. Its working basis is the Three-Year Programme on Austrian Development Policy, which continues to be prepared by the Ministry for Foreign Affairs. It defines the central position of the Austrian development policy and the strategic framework conditions of the ADC. This programme is based on the new Development Cooperation Act, in which sustainable economic and social development in line with the principle of environmental protection is enshrined as the central goal.

In addition, ADA cooperates closely with non-governmental organisations and private businesses, which are engaged in the realisation of development projects. A range of financing instruments is being offered in order to meet the strategic goals of the Austrian Development Cooperation programme and to support respective NGO activities[206].

Entitled entity:

In its Private Sector and Development programme ADC cooperates with European and local companies and organisations working in the area of development and is interested in flexible and creative approaches, to be developed in partner-like dialogue.

Eligibility criteria:

Criteria for project selection:

- The project brings a benefit to the local population which extends beyond the corporate core business.
- The project is in line with development policy goals and quality criteria.
- National laws and international environmental and social standards are adhered to.
- Unfair competition is avoided.
- A substantial financial contribution is made by the partners concerned.

Status:

The participation of organisations in development activities is ensured through financing instruments such as calls for proposals and co-financing programmes. The cooperation with Austrian enterprises in development projects has been enhanced through the new focus on private sector and development.

Public access:

There was no information available.

2.2.2. Belgium

(a) Directorate-General for Development Cooperation (DGDC)

Accrediting body:

The Directorate-General for Development Cooperation (DGDC) forms part of the federal Department of Foreign Affairs, Foreign Trade and Development Cooperation at the Ministry of Foreign Affairs.

Entitled entity:

Only non-governmental organisations can be selected by the DGDC.

These organisations have to comply with the following minimum criteria, Art. 10 of the Law on the Belgian international co-operation:

[205] www.osgs.at

[206] http://www.ada.gv.at/view.php3?r_id=3057 &LNG=en&version, 17 August 2005.

- The organisation has to be established as a non-profit association or as foundation for public utility in accordance with the Law of 27 June 1921 or as a company with social purpose (for the definitions see Chapter 2.3 on page 39 ff)

- The main purpose of the organisation has to be development co-operation

- The organisation should have experience in the sector's activities and prove it by submitting activity reports of the last three years

- The organisations activities should include an action plan for several years; it has to include a financial plan

- It must be capable to ensure the continuity of its operation

- The majority of the members of its organs have to have Belgian nationality

- It shall undertake activities in conformity with the objectives of the Belgian international co-operation (Art. 3 of the Law) and fulfil the eligibility criteria

- It shall have transparent accountancy

Eligibility criteria:

In order to contribute to durable human development, the Belgian international co-operation takes into account the relevance for development measured using the criteria fixed by the Committee of Development Aid of the Organisation for Economic Cooperation and Development. This makes it possible to check if the actions sufficiently hold the following guiding principles:

- reinforcement of the institutional capacities and management

- economic and social impact

- technical and financial viability

- effectiveness of the procedure of execution envisaged

- attention paid to the equality between men and women

- respect for the protection or the safeguard of the environment

Status:

Recognition as NGO for Development

The recognition is given for an indeterminate period. In the case that the NGO has not received any subsidies for three years it loses the recognition. Nevertheless within six months the NGO can ask for a renewal, Art. 4 Arrêté royal du 1997-07-18.

Recognised NGOs for Development receive subsidies based on an approved five-year program, which must be annually validated with an action plan and report.

Four types of activities are subsidized: partner financing (operations carried out with a partner in the South); the deployment of personnel (providing technical assistance and expertise to the South); education (informing and raising the awareness of the Belgian population); and services (offering specific support to other NGOs and partners).

Depending on the extent to which the conditions have been fulfilled, the government will subsidize approved programs according to either an 85/15 distribution formula (85% subsidy + 15% NGO contribution) or a 75/25 distribution formula[207].

Public access:

There was no information available.

(b) Association pour une Ethique dans les Récoltes de Fonds (AERF)

Accrediting body:

The "Association pour une Ethique dans les Récoltes de Fonds" (AERF) is a private association for public utility established 1996 by 19 organisations.

Entitled entity:

Entities that seek membership with the AERF have to fulfil the following requirements[208]:

[207] http://www.dgdc.be/en/dgdc/annual_report/2003/chap_4_1.html, 2 February 2005.

[208] http://www.vef-aerf.be/article.php3?id_article=19, 4 February 2005.

- it has to be an organisation with legal personality and a registered seat in Belgium

- the organisations is established to appeal for funds and conducts this activity to reach a social purpose

- the organisation has signed the "Code of Ethics"

- it has been authorised by the Ministry of Finance to deliver affirmations of tax exemption

The membership is assigned to organisations that meet the requirements on decision of the general assembly and the notion of the control committee of the AERF.

Eligibility criteria:

The AERF adopted the "Code of Ethics"[209] to provide a guarantee of moral quality in the collection of funds as well as transparency of the accounts. The accredited organisations have to fulfil the following liabilities:

- they have to obtain annual accounts, presenting the origin and the use of their resources, which are verified by an auditor and published to the donors.

- they have to inform the donors, the collaborators, the employees and the members of AERF on the following documents:

  organisations that collect more than 25.000 Euro funds a year have to publish balance sheets of the last two years and annual accounts.

  All organisations, have to publish their budget, the salaries and a amortization table.

  The publication has to be made accessible to everyone interested, e.g. on the webpage of the organisation.

- the organisations do not conduct business activities in contradiction to the social purpose

- the organisations respect the privacy of the donors particularly concerning their data files

- the appeals for funds adhere to the social purpose of the organisations as laid down in their statutes; they have to provide precise information on the destination and method of using the collected money as well as on the collecting organisation

Status:

The members of AERF are allowed to use the label of AERF in all their communications.

Public access:

The organisations have to hold the basic documents publicly available.

The AERF publishes a list of the entitled entities on its website.

2.2.3. Denmark

(a) Danish International Development Assistance (Danida)

Accrediting body:

The Danish International Development Assistance (Danida) is an institute under the Ministry of Foreign Affairs.

Entitled entity:

Danish NGOs have to concentrate their efforts, creating both the time and space to follow up the recommendations of the Civil Society Strategy and to ensure the necessary coherence and efficiency of the programmes. They have to make sure that the Danish NGOs have the necessary strength and legitimacy by virtue of their popular rooting.

Danish NGOs have achieved special status as important and competent partners for the Danish Ministry of Foreign Affairs in implementing Danish humanitarian assistance.

A relationship of confidence has thus been developed that makes it possible to ensure that relief activities can be launched at very short notice. The Ministry grants humanitarian assistance through Non-Danish NGOs in exceptional circumstances only[210].

Eligibility criteria:

[209] See the Code of Ethics in the Annex, 2.2.6.d.

[210] http://www.um.dk/en/menu/DevelopmentPolicy/DanishNGOs/, 29 August 2005.

There was no information available.

Status:

Recognised NGOs can receive subides from the Danida.

Public access:

There was no information available.

(b) Danish EU-NGO Platform

Accrediting body:

The Danish EU-NGO Platform is a private organisation, formed by 15 Danish development and relief NGOs, who collaborate on questions related to the development policy of the European Union.

Due to the lack of information in English, no further details can be given but it seems that the organisation is not an accreditation body[211]. But it is so far the only organisation that could be found.

Entitled entity:

Danish NGOs for Development are the only entities entitles for accredtitation.

Eligibility criteria:

Status:

The aim of the EU-NGO Platform is two-pronged: To keep the Danish NGOs up to date with EU's development policy, and to influence this policy by entering into dialogue with the Danish Foreign Ministry and the EU-institutions. On the European level, the Platform is part of the European NGO Confederation CONCORD which works to ensure that civil society organisations in Europe and in the South play a larger role in EU's development policy.

Public access:

There is a list of members available on the EU-NGO Platform's website.

2.2.4. Finland

(a) Ministry for Foreign Affairs - Development Cooperation

Accrediting body:

Department for Development Policy of the Ministry of Foreign Affairs

Entitled entity:

The NGO applying for support has to be a non-profit organisation (organisation, association or foundation), registered in Finland and has to have legal capacity to operate. When the NGO applies for funds for the first time, it must include in its application a copy of its registration documents. A minimum of one year should have elapsed from the registration date to the time of applying[212].

Eligibility criteria:

- The NGO has sufficient expertise in implementing and managing projects.
- The objectives and scope of the project have to be realistic in relation to the NGO's own resources, its experience in development and its ability to obtain funds.
- The Finnish NGO has to have a local partner which is responsible for the local implementation of the project. The partner should preferably be a local NGO or other clearly defined organisation or group which has been active for at least a year.
- The project is in line with Finland's Development Policy Objectives and also supports the development objectives that are in place in the partner country.
- NGO's own financing has to cover at least 20 % of the project's total costs. A minimum of 10 % of the total costs has to be provided by the NGO in cash.

[211] http://www.eu-ngo.dk/English/index.htm, 21 June 2005.

[212] http://global.finland.fi/english/projects/ngo/require.htm, 10 November 2004.

- The NGO has to prove its capability to plan, implement as well as monitor and evaluate projects

- The NGO has to apply professional auditing, book keeping and reporting systems and practices.

- NGO development co-operation also has informative and educational objectives: the NGOs should actively inform the public about their projects and co-operation countries.

Status:

Non-governmental organisations may apply for financial support for their development co-operation projects.

Public access:

The Finnish embassy or consulate keeps a register of Finnish citizens, in order to establish contact in exceptional conditions. For this reason, the NGO is asked to register at the Finnish embassy or consulate in the partner country.

2.2.5. France

(a) Comité de la Charte de déontologie des organisations sociales et humanitaires faisant appel à la générosité du public (CC)

Accrediting body:

The Commission of the Charter of Deontology "Comité de la Charte de déontologie des organisations sociales et humanitaires faisant appel à la générosité du public" (CC) was founded in 1989, by social and humanitarian associations and foundations. It is an association of private law; it is independent of the authorities and does not have legal prerogatives.

It developed a deontology summary in a charter fixing the rules of good practices for the collection and the management of funds; it manages the compliance of the approved organisations with these rules[213].

Entitled entity:

The assigning entity has to be a non-profit organisation (association, foundation, else) under French law. It has to work on social or humanitarian goals and work for the general interest. The organisation has to have existed for at least two years. It must call upon the generosity of the public at a national level and collect more than € 500,000 of private funds per year (mainly gifts from private individuals).

Eligibility criteria:

The organisations shall affirm the concept of transparency and respect the principles set out in the CC Charter concerning:

- the statutory operating of the organisation and the management (that is they should not to be interested in gaining profit)

- the use of management methods to optimise the use of funds

- the quality of communication and fund-raising activity

- the financial transparency

Status:

Accepted organisations are allowed to use the Charter's label.

Public access:

A list of agreed organisations is published on the website of the CC.

2.2.6. Germany

(a) Local Tax Office

Accrediting body:

The local tax office is the authority in charge of awarding the status "Gemeinnützigkeit" "Organisation with charitable, benevolent or churchly purposes" in accordance with §§ 51 ff Federal Fiscal Code.

Entitled entity:

The organisation has to be a corporation in accordance with § 1 Company Tax Code "Körperschaftssteuergesetz (KStG)": which are

[213] http://www.comitecharte.org/mission/depl-encourag_generos.pdf, 13 December 2004.

- capital companies (stock companies, association limited by shares, limited corporation)
- cooperative societies or provident societies
- mutual insurance associations
- private law corporations (e.g. registered associations and foundations)
- unregistered associations and foundations
- commercial businesses of public corporations

Eligibility criteria:

The organisation has to pursue one of the following purposes:

- charitable purpose

  working for the benefit of the public, not only for the benefit of members or a limited circle of persons

  any material, intellectual or moral topic as:

  advancement of science, research, education, culture, art, religion, development aid or the protection of the environment

  advancement of sports and welfare

  advancement of the democratic political system

  advancement of animal or plant breeding, traditions or amateur radio

- benevolent purpose
- churchly purpose

They have to pursue the purpose in an altruistic way. Therefore the means have to be spent on the purpose of the organisation.

The organisation has to work exclusively and directly on that purpose.

The statutes have to be detailed enough to ensure the compliance with these rules.

The actual operation of the organisation has to comply with the statutes.

Status:

Organisations acquire the status "organisation with charitable, benevolent or churchly purposes" in accordance with §§ 51 ff Federal Fiscal Code to receive tax incentives.

Public access:

There was no information available.

(b) Federal Ministry of Economic Co-operation and Development

Accrediting body:

The Federal Ministry of Economic Co-operation and Development "Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung" (BMZ) provides funding assistance for development projects.

Entitled entity:

The BMZ provides funds to "private executing agencies", a term that is only used by the BMZ. In fact, these entities are non-governmental organisations which meet the following requirements:

- The organisations shall be legal persons under private law (private executing agencies) that are headquartered and conduct their business in the Federal Republic of Germany and whose non-profit or charitable status is recognised under fiscal law
- In general, funding is not provided to private executing agencies that are supervised and controlled by international private umbrella organisations or to private executing agencies of which public corporations or private companies are members
- The entity must have the expertise, staff and organisational capacity to plan, implement, monitor and account for projects in a professional way. The activities must be documented in the form of publicly accessible annual operating and financial reports
- The entities in the partner country must be clearly identifiable, experienced and working for non-profit oriented projects. Members of the private executing agency must not at the same time occupy an executive position within the project executing agency in the partner country

- The administrative costs must bear an appropriate relation to its income. Proof of this may be provided by the certificate of donation-worthiness (Spendensiegel) awarded by the German Central Institute for Social Issues (Deutsches Zentralinstitut für soziale Fragen - DZI). Otherwise, it must be proven that at least 80% of the annual income that is intended for use in the partner countries is spent on improving the situation of disadvantaged sections of the population

- The public relations work and fund-raising activities must provide pertinent information on the situation of the people in the partner countries

- The entity, before receiving funding, has already carried out projects independently and over a continuous period of at least three years in the partner countries of development co-operation in collaboration with local project executing agencies in those countries

Eligibility criteria:

Funding is provided for projects and programmes that

- bring about a direct and sustained improvement in the economic, social or ecological situation of the poor in the partner countries, provide effective support to the self-help efforts of these people and involve them as partners in the process of planning and implementation

- or foster observance of human rights in the partner countries.

Status:

Organisations that meet the criteria can receive funding for their projects. They cannot claim any entitlement.

Public access:

(c) Deutsches Zentralinstitut für soziale Fragen

Accrediting body:

The German Central Institute for Social Issues "Deutsches Zentralinstitut für soziale Fragen" (DZI) is a private foundation that was founded in 1893.

Entitled entity:

The assignment of the Seal is not limited to certain types of entities. All entities that meet the following requirements can request the Seal.

- The entity has to have the registered office in Germany

- The organisation has to be recognised as "organisation with charitable, benevolent or churchly purposes " in accordance with §§ 51 ff Federal Fiscal Code

- It is financed by donations; i.e. at least 10 % of its income is derived from funds

- The organisation is active nationally

Furthermore the entity has to state that the requirements were fulfilled in the preceding year as well.

Eligibility criteria:

The entity has to commit compliance with the following standards:

- verifiable, economical and statutory use of the means under control of the relevant tax law regulations

- planning of the receipts and expenditures in the long-term

- clear and comprehensible accounting

- examination of the annual account by an accountant

- presentation of the accounts with the DZI

- internal monitoring of the management committee by an independent supervisory body

- in principle no premiums, commissions or profit sharing for the handling of donations

- true, clear and material advertisement in word and picture

Status:

The DZI assigns its Seal of Approval to all entities that meet the criteria.

Public access:

The DZI publishes a list of accepted organisation on its webpage.

2.2.7. Greece

(a) Hellenic Aid

Accrediting body:

The International Development Cooperation Department (Hellenic Aid) of the Ministry of Foreign Affairs was set up under Law 2731/99. Hellenic Aid is an independent section of the Ministry of Foreign Affairs[214].

Entitled entity:

All NGOs are entitled to accreditation with the Hellenic Aid.

Eligibility criteria:

NGO evaluation criteria for development activities:

- Good acquaintance with the country and particularly the specific area where the program is implemented, in addition to the local needs, situation and problems
- Ability to cooperate and coordinate with local NGOs, other local development agencies, in addition to knowledge of governmental priorities
- Ability to cooperate with European NGOs and international organisations actively involved in the same area
- Ability to motivate Greek Civil Society and new volunteers in solidarity activities involving problems in developing countries and countries in transition
- Level of know-how and experience

The stake of the participation of Hellenic Aid in co-financing amounts by rule, to 50% of the total budget for the program. The NGO is bound to contribute at least 15% of the total cost either as commodities or financial (own participation) contributions.

Status:

Recognised organisations can seek subsidies for development programs that aim primarily at combating poverty in developing countries by means of enhancing the living standard and making essential improvements to local development potential.

Public access:

There was no information available.

2.2.8. Ireland

(a) Development Cooperation Ireland (DCI)

Accrediting body:

The "NGO Co-Financing Scheme" of the Development Cooperation Ireland (DCI) is a program of the Department of Foreign Affairs of the Irish government[215].

Entitled entity:

To join the program, the organisation has to meet the following requirements:

- It is an Irish based or Irish linked NGO
- It is recognised as charitable tax exempted by Irish Revenue Office

Eligibility criteria:

The entity has to work on development projects in one of the following sectors:

- Basic Education
- Primary Health Care
- Water/Sanitation
- Community/Rural Development

[214] http://www.mfa.gr/english/foreign_policy/cooperation/creation.html, 16 February 2005.

[215] www.dci.gov.ie/Uploads/NEWAPPLIC.doc, 23 November 2004.

Status:

DCI provides one off co-funding for projects proposed by Irish based or Irish linked Non-Governmental Organisations.

Public access:

There was no information available.

(b) Revenue Commissioners of Charitable Donations and Bequests

Accrediting body:

The Revenue Commissioners of Charitable Donations and Bequests for Ireland have responsibility for the administration of the relevant charitable tax exemptions under the Taxes Consolidation Act 1997.

Entitled entity:

All bodies that are working for charitable purposes under Section 308 Taxes Consolidation Act can apply.

Eligibility criteria:

To be regarded as charitable the entity must be engaged in an activity under one of the heads of charities (see Definition Charity sectionChapter 2.3.5.8. (a) on page 70).

The Revenue Commissioners will not normally consider the following to be charitable:

- lobbying for the reform of law or political activities
- an organization whose main object is to benefit the members rather than a section of the community
- provision of social and recreational activities
- an organization set up solely to fundraise
- illegal activities

In addition, the applicant must:

- have its center of management and control and be legally established in Ireland. The majority of its directors must be resident within Ireland and the applicant must have a permanent establishment and some operations within Ireland
- ensure that its objects and powers are so framed that every object to which its income or property can be applied is charitable
- be bound, as to its main objects and the application of its income or property, by a Governing Instrument e.g. memorandum and articles of association, deed of trust constitution or other rules

The Revenue Commissioners require that four standard clauses are included in the governing instrument of a charity:

- a winding up clause which provides any remaining assets be distributed to a body having similar main objects, or failing that to some other charitable body
- an income and property clause which provides that all the income and property of the organization is to be applied solely towards its charitable main objects. Directors, trustees or officers are not allowed to receive any remuneration or other monetary benefit
- Any proposed alterations to the governing instrument must be notified to the Revenue Commissioners for approval.

Reviews are conducted by the Revenue Commissioners to ensure that the body continues to satisfy the conditions for exemption. Within 18 months of the date the exemption was granted, a copy of the first year's financial accounts together with a report on activities must be submitted to the Revenue Commissioners. Financial statements normally include a Statement of Income and Expenditure as well as a Statement of Assets and Liabilities. Accounts must be audited if the annual income exceeds IR£20,000. In addition to the initial 18-month review, the Revenue Commissioners may conduct ongoing periodic reviews[216].

Status:

An entity that is recognized as a charity will be issued a charity reference number and be entitled to tax exemptions.

Public access:

[216] http://www.usig.org/countryinfo/ireland.asp, 29 September 2005.

The Revenues Commissioners maintain and publish a list of exempted bodies, and this is sometimes mistaken as a register of charities. They have no power to maintain a register of charities or statutory powers of investigation.

2.2.9. Italy

Accrediting body:

Entitled entity:

Eligibility criteria:

Status:

Public access:

There is no seal of approval/accreditation system according to all the referred documents/books.

2.2.10. Luxembourg

(a) Lux-Development (LD)

Accrediting body:

Lux-Development (LD) is a private limited company and owned 61% by the state. LD manages on behalf of the Ministry of Foreign Affairs almost all projects financed by the Ministry of Foreign Affair's global budget[217].

Entitled entity:

Entitled entities are Luxembourg's NGOs that have been accepted by the Ministry of Foreign Affairs.

Eligibility criteria:

The programs or projects of the NGOs have to be concerned with development countries, have to give detailed information on their beneficiaries, aims, means and financial structure to achieve them and have to be directed by competent people, Art. 9 Loi du 1.06.1996

Status:

There was no information available.

Public access:

There was no information available.

(b) Cercle de Coopération des Organisations Non Gouvernementales de Développement du Luxembourg (Cercle)

Accrediting body:

The "Cercle de Coopération des Organisations Non Gouvernementales de Développement du Luxembourg" is a private non-profit making association that represents Luxembourg's NGOs for Development with the public authorities[218].

Entitled entities:

To become a member, the organisation has to be a non-profit making association or foundation established under the law of 21 April 1928 with its legal seat in Luxembourg.

Eligibility criteria:

The organisation have to work within the scope of the "Cercle"; it has to work for the promotion of the development in the countries of the third world, the promotion of the cooperation in development or for more justified economic relations.

Status:

Accepted organisations form part of the "Cercle" and are represented to public authorities by the "Cercle".

Public access:

The "Cercle" publishes a list of members on its webpage.

2.2.11. The Netherlands

(a) Centraal Bureau Fondsenwerving (CBF)

Accrediting body:

The "Centraal Bureau Fondsenwerving" (CBF) is a private organisation that is granted subsidies by

[217] http://www.lux-development.lu, 16 February 2005.

[218] http://www.ongd.lu/rubrique.php3?id_rubrique=27, 31 August 2005.

the Ministry of Justice as well as the Ministry of Welfare, Health and Culture[219].

Entitled entity:

The following organisations are allowed to request the seal for fundraising:

- The organisations must be established as foundation or association
- Have full legal capacity
- They must be established under Dutch law
- The purpose is a charitable, cultural, scientific or other purpose of public benefit
- The entity is conducting its work by recruited funds; fund recruitment is understood as money ceded voluntarily without proportional valuable consideration; thereby provided goods or services are not considered as eligible; no rights for care or aid can be derived.

Eligibility criteria:

The organisations need to fulfil the following criteria[220]:

- The organisations need to have an independent governing board consisting of at least five members without narrow family or similar relations; it is responsible for the financial directives, the policy and the daily control
- It should state a clear policy in a perennial action plan (for at least three years) containing measurable objectives and indicate priorities
- For all fund recruiting, information and communication measures the objectives, programs and financial situation of the entity have to be clearly defined. The total cost of the fundraising must not exceed 25 % of its profits.
- The expenditure has to be in accordance with the budget; resources which have been given a restricted objective have to be spent on this objective within three years.
- The organisation should have a yearly press coverage informing on policy, communication, spending of the resources and the objectives.
- It should publish an annual account certified by an auditor; this has to be available free of charge for anyone interested

Status:

Organisations that fulfil the criteria acquire the Seal of Approval of CBF.

Public access:

The CBF publishes a list of organisations that have been awarded the Seal of Approval on its website.

(b) Vereniging van Fondsen in Nederland

Accrediting body:

The "Vereniging van Fondsen in Nederland" (FIN) Association of Funds in the Netherlands is an umbrella organisation of foundations[221].

Entitled entity:

Members of the FIN are private foundations established in the Netherlands that subscribe to the "recommendations" drafted by the FIN. These recommendations refer to the foundations' objectives and donations-policy, and deal with preventing conflicts of interests, handling of requests, supervising the spending of grants and writing financial reports. Currently the association has 250 members.

There is no more information available in English.

2.2.12. Portugal

(a) Instituto Português de Apoio ao Desenvolvimento (IPAD)

Accrediting body:

The Portuguese Institute for Support to Development "Instituto Português de Apoio ao Desenvolvimento" (IPAD) is an institute under the Ministry of Foreign Affairs.

[219] http://www.cbf.nl, 14 March 2005.

[220] http://www.cbf.nl/pages/criteria/Reglement%20CBF-Keur.pdf, 15 March 2005.

[221] http://www.verenigingvanfondsen.nl/english/index.htm, 3 March 2005.

Entitled entity:

NGOs for Development registered with the Ministry of Foreign Affairs

Eligibility criteria:

The NGO has to have at least three years of operating experience in development cooperation projects.

In order to assure financial transparency, it has to present an annual report and submit accounts to the IPAD.

Status:

The Ministry of Foreign Affairs can provide subsidies in the form of project co-financing.

Public access:

The IPAD publishes a list of co-financed organisations on its website.

2.2.13. Spain

Accrediting body:

Entitled entity:

Eligibility criteria:

Status:

Public access:

There is no seal of approval/accreditation system according to all the referred documents/books.

2.2.14. Sweden

(a) Styrelsen för Internationellt Utvecklingssamarbete (SIDA)

Accrediting body:

"Styrelsen för Internationellt Utvecklingssamarbete" (SIDA), the Swedish Agency for International Development Cooperation is a government agency under the Ministry for Foreign Affairs[222].

Entitled entity:

Swedish NGOs for Development are the only entities entitled for accreditation.

Eligibility criteria:

The NGO for Development run activities for which they receive grants from SIDA. They have to fulfil the following criteria:

- The application must contain a description of the recipient organisation, the activity for which the grant is sought and a budget
- The NGO must contribute 10 per cent of the total cost of the project
- The project grants are channelled through 13 so-called framework organisations; the NGO must be presented to SIDA by one of them
- The NGO shall have fully discharged its obligations under any earlier agreement with SIDA
- The SIDA funds shall be kept in a separate bank account

Status:

Accredited NGOs for Development receive co-financing for their projects.

Public access:

(b) Stiftelsen för Insamlingskontroll (SFI)

Accrediting body:

The "Stiftelsen för Insamlingskontroll" (SFI), is a private organisation. It has the entire disposal on all postal giro account numbers starting with 90[223].

[222] http://www.sida.se, 5 September 2005.

[223] http://www.insamlingskontroll.a.se, 1 December 2005.

Entitled entity:

All types of organisations are entitled to request the postal account.

The entity has to have legal personality and must be registered with appropriate authorities.

Eligibility criteria:

- The entity has to be non–profit making; it has to work for cultural, humanitarian, beneficial or other generally useful purposes and not work for politics or contrary to the law.
- The organisation has to adhere to ethical standards.
- It needs to have statutes.

Status:

Eligible organisations receive a postal giro account with the starting number 90, which in Sweden is recognised as a label.

Public access:

There was no information available.

2.2.15. United Kingdom

Accrediting body:

Entitled entity:

Eligibility criteria:

Status:

Public access:

There is no accreditation system in the UK.

2.3. Summary and Table of Accreditation Systems

In most of the countries, accreditation systems are used as a method to unify and label (parts of) the non-profit sector. It can be seen that the idea of the co-operation of entities with similar scope is realised in many countries for organisations working in the development sector. It is due to the sector's structure and the fact that non-profit organisations or in this case more precisely, non-governmental organisations for development help the state in fulfilling its international responsibility. Therefore they are granted governmental subsidies. But as the state can only provide grants to recipients that proved to be able to carry out the task; it has to establish a system to assure a minimum level of ability.

Table 4, on page 119, summarises the various accreditation systems for which information could be found.

3. Size of the Non-profit Sector

Table 5, on page 121, gives an overview of the size of the non-profit sector in the EU15 Member States. The collected data differs between the legal forms of entities and mainly refer to the number of registered entities and accredited organisations. Where possible, also figures on the business volume or the assets of the organisations are included. It has to be noted that the figures can only give an idea on the real size of the non-profit sector because the number of the unregistered entities can at best be estimated.

Table 4. Accreditation Systems

Country	Accrediting body	Formation	Type of entitled entity	Criteria	Status	Public access
Austria	Österreichisches Spendengütesiegel	Private association	All	Fundraising method Public benefit purpose Annual Report	Seal of Approval	Online list
	Austrian Development Agency	Private organisation	Organisations working for Development	Benefit to the local population Development policy goals and quality criteria National laws Substantial financial contribution	Co-operation, Co-financing	-
Belgium	Directorate-General for Development Cooperation	Institute of the Ministry of Foreign Affairs	NGO; working for Development	criteria by the Committee of Development Aid	Acknowledgment; Subsidies	
	Association pour une Ethique dans les Récoltes de Fonds	Private associations for public utility	Organisation with legal personality	Stick to the "Code of Ethics"	Label	Online list
Denmark	Danish International Development Assistance	Institute of the Ministry of Foreign Affairs	NGO, working for Development		Subsidies	
	Danish EU-NGO Platform	Private organisation	NGO, working for Development		Co-operation with NGO	Online list
Finland	Department for Development Policy of the Ministry of Foreign Affairs	Ministry of Foreign Affairs	Non-profit organisation; working for Development	Expertise in projects Development Policy Local partner Financial contribution	Financial support	Register with embassy in partner country
France	Comité de la Charte de déontologie	Private association	Non-profit organisation	Statutory operating Management methods Communication Financial transparency	Label	Online list
Germany	Local Tax Office	Part of the Ministry of Finance	Corporations	Charitable, benevolent or churchly purpose	Tax status, legal status; Subsidies	
	Federal Ministry of Economic Co-operation and Development	-	NGO; working for Development	Direct and sustained improvement in partner countries Observance of human rights	Co-financing	
	Deutsches Zentralinstitut für soziale Fragen	Private foundation	Organisations with charitable, benevolent or churchly purpose	Stick to the DZI standards	Seal of Approval	Online list

Country	Accrediting body	Formation	Type of entitled entity	Criteria	Status	Public access
Greece	Hellenic Aid	Department of the Ministry of Foreign Affairs	NGO; working for Development	Acquaintance with the country Ability to cooperate Level of know-how and experience	Subsidies	
Ireland	Development Cooperation Ireland	Programm of the Department of Foreign Affairs	NGO; recognised as tax exempt	Basic Education Primary Health Care Water/Sanitation Community/Rural Development	Co-financing	
	Revenue Commissioners of Charitable Donations and Bequests	Department of Finance	All entities	Working for charitable purpose	Charity reference number	List publicly available
Italy	There is no seal of approval/accreditation system according to all the referred documents/books.					
Luxembourg	Lux-Development	Private limited company	NGO; working for Development	Development countries Information on beneficiaries, aims, financial structure		
	Cercle de Coopération des Organisations Non Gouvernementales de Développement du Luxembourg	Private non-profit making association	Non-profit making association or foundation	Work for promotion of Development	Co-operation with NGO	Online list
The Netherlands	Centraal Bureau Fondsenwerving	Private organisation	Association/ foundation with public benefit purpose	Stick to the CBF criteria	Seal of Approval	Online list
	Vereniging van Fondsen in Nederland	Private organisation	Private foundations	Stick to the FIN recommendations	Label	
Portugal	Instituto Português de Apoio ao Desenvolvimento	Institute of the Ministry of Foreign Affairs	NGO for Development registered with the Ministry	Operating experience Financial Transparency	Subsidies	Online list
Spain	There is no seal of approval/accreditation system according to all the referred documents/books.					
Sweden	Stiftelsen för Insamlingskontroll	Private organisation	All entities	Non–profit making Useful purpose Ethical standards Statutes	Postal giro account, starting number 90	
	Styrelsen för Internationellt Utvecklingssamarbete	Governmental agency of the Ministry of Foreign Affairs	NGO	Project description Contribute 10 per cent Agreed by framework organisation Separate bank account	Co-financing of projects	
United Kingdom	There is no accreditation system in the UK.					

Table 5. Size of the Non-profit Sector

Country	Type of entity	Number of Entities	Date	Amount of Assets	Other information
Austria	Association	108.149[224]	Dec 2003		
	Foundation	3.200[225]	Feb 2005		
	Foundation for public benefit/Funds	222[226]	Feb 2005		
	NPO	94.000	Dec 2000	6.3 billions Euro.[227]	95% of NPO are associations
	Funds	75[228]	Feb 2005		
	OSGS accredited entities	124[229]	Feb 2005		
Belgium	Association				
	International non-profit association				
	Foundation for public utility				
	NGO for Development	130[230]	Feb 2005		
	AERF accredited entities	100[231]	Feb 2005		
Denmark	Association	-			

[224] "Der Vereinsbestand in Österreich zum Stichtag 31.12.2003 betrug 108.149 Vereine. Mit heutigem Tag scheinen in Österreich 222 Stiftungen und 75 Fonds auf", mail from the Ministry of Interior, 25 February 2005.

[225] http://www.ngo.at/recht/fstift.htm, 28 February 2005.

[226] "Der Vereinsbestand in Österreich zum Stichtag 31.12.2003 betrug 108.149 Vereine. Mit heutigem Tag scheinen in Österreich 222 Stiftungen und 75 Fonds auf", mail from the Ministry of Interior, 25 February 2005.

[227] http://www.iogv.at/startset.html, 28 February 2005.

[228]"Der Vereinsbestand in Österreich zum Stichtag 31.12.2003 betrug 108.149 Vereine. Mit heutigem Tag scheinen in Österreich 222 Stiftungen und 75 Fonds auf", mail from the Ministry of Interior, 25 February 2005.

[229] http://www.osgs.at, 28 February 2005.

[230] http://www.dgcd.be/en/actors/indirect_cooperation/index.html, 28 February 2005.

[231] http://www.vef-aerf.be/vef/, 4 February 2005.

Country	Type of entity	Number of Entities	Date	Amount of Assets	Other information
	Non-commercial foundation	12.000[232]	Mar 2005		
	Commercial foundation	1.078[233]	1999		
Finland	Associations	120.000 registered associations estimated some ten thousand unregistered associations[234]			
	Foundations	2.600			
	NGO	200			
France	Non-profit association	800.000[235]	Dec 2004		
	Association with special recognition				Non profit associations recognised for public benefit
	Public utility foundation				
	Corporate foundation				
	CC accredited entities	52			
Germany	Association	574.359[236]	Dec 2003		
	Foundation	12.193[237]	Dec 2003		
	DZI accredited entities	187			According to the DZI the total sum of donations in Germany to NPO is around 4 billion Euros a year.[238]
	Corporations	19.400 public limited corporations 960.000 limited corporations			

[232] Mail from the civil affairs agency, 9 March 2005.

[233] Hansen in Hopt/Reuter, Denmark, p. 288.

[234] Helander/Sundback in: JH working paper Finland, p. 11.

[235] http://www.conseiltat.fr/ce/rappor/index_ra_li0002.shtml, 10 December 2004.

[236] http://www.registeronline.de/vereinsstatistik/2003, 24 November 2004.

[237] http://www.stiftungsstatistik.de, 24 November 2004

[238] Das DZI schätzt das jährliche deutsche Spendenvolumen für soziale Zwecke auf etwa 2,3 Milliarden Euro, allein die derzeit 187 Spenden-Siegel-Organisationen erhalten jährliche Sammlungseinnahmen von 1,2 Mrd. Euro. Unter Einbeziehung der übrigen gemeinnützigen Zwecke (u.a. Umwelt-/Naturschutz, Kultur) dürfte das gesamte Spendenvolumen voraussichtlich nicht über insgesamt 4 Mrd. Euro pro Jahr liegen. (Email of Burkhard Wilke, received 25th Jan. 2005).

Country	Type of entity	Number of Entities	Date	Amount of Assets	Other information
Greece	Association	-			
	Foundation	500[239]	Dec 2001		
Ireland	Association	-			
	Foundation	More than 20[240]	1997		The total amount of grants given by foundations in 1997 is around 27 million Euros
Italy	Association	62.231 incorporated 156.133 not incorporated	Dec 2001		
	Foundation	3.077	Dec 2001		
	NGO for Development	171[241]	June 2005		
	NPO				
	ONLUS	19.000[242]			
Luxembourg	Association	-			
	Foundation	-			
The Netherlands	Association				
	Foundation	130.000 foundations[243]			
	FIN accredited entities	FIN: 250 members	Feb 2005		
	CBF accredited entities	210	Feb 2005		
Portugal	Association	30.000			

[239] Sophia P. Tsakraklides in Schlüter/Then/Walkenhorst, Greece, p. 151.

[240] Donoghue in Schlüter/Then/Walkenhorst, Ireland, p. 159.

[241] http://www.esteri.it/ita/4_28_66_75_249.asp, 14 June 2005.

[242] JAI/D2/NSK(2004)8301; answer Italy question 4.

[243] van der Ploeg in Hopt/Reuter, The Netherlands, p. 406.

Country	Type of entity	Number of Entities	Date	Amount of Assets	Other information
	Foundation	800			
	NGO for Development	73			
Spain	Association	205.079[244]	Dec 2000		
	Non-profit association				
	Foundation	1.000 working on national level 5.350 working on a regional level			
	NGO for Development	680			
Sweden	Association	-			
	Foundation	35.000 unregistered 14.200 registered until May 2000[245]	May 2000	1.4 billion Euros 26.4 billion Euros	
	NGO	300			
	SFI accredited	500			
United Kingdom	Association	-			
	Foundation	-			
	NPO	500,000-700,000[246] in the UK			

[244] http://www.mir.es/oris/docus/balan00/sgt03.htm, 29 November 2004.

[245] Wijkström in Schlüter/Then/Walkenhorst, Sweden, p. 242.

[246] Private Action, Public Benefit, Strategy Unit Report September 2002, Cabinet Office, p.15

Country	Type of entity		Number of Entities	Date	Amount of Assets	Other information
	Community level organisation		180,000 – 360,000[247]	1999		
	Charity	E/W	188,000[248] (including 27,000 branches or subsidiaries of other charities)	2002	26.71billion Sterling Pounds (2001)	

[247] ibid, p.24

[248] ibid, p.18

4. Monitoring

4.1. Monitoring System

As a third important issue after registration and accreditation systems, monitoring systems also have to be considered. All of these systems are meant to enhance the transparency of the non-profit sector. While registration and accreditation systems are meant to control the entities at the instance of establishment respectively of the application, there is no continuous oversight mechanism to ensure the compliance with the criteria. It is only here where the additional value of monitoring is recognised. Monitoring is understood as a controlling system to make sure that the organisations are as reliable as they claim. In the standards on which the relevant monitoring systems are based, there are differences but the main idea is similar: to provide the donors with dependable, independent information concerning the reliability, the effectiveness and the efficiency of the non-profit organisations. This can only be ensured by holding the organisations accountable.

To understand the different national monitoring systems some parameters have been examined: the monitoring body, the extent of the monitoring in terms of documents that have to be submitted to the monitoring body and the power of the oversight body as well as the frequency of monitoring.

4.2. Country information

4.2.1. Austria

(a) Associations

Monitoring body:

The local competent authority is in charge of monitoring the associations.

Monitoring standards:

Every association has to appoint two independent auditors "Rechnungsprüfer" to examine the annual report of the board. The entity has to inform its members about the finances and the auditor report on the basis of total revenue. In case the auditors notice irregularities, they can call a general meeting and inform the members about it.

There are additional rules for associations with significant revenues:

- middle sized associations:

  In case the total revenue in two successive years exceeds one million Euros, the financial statement of the association has to be reviewed and certified annually by the statutory auditor under the same conditions as those of companies with limited liability or small stock companies, Art. 22.1 VerG.

- large associations:

  In case the total revenue in two successive years exceeds three million Euro, the financial statement must be reviewed and certified by the statutory auditor and additionally, the financial statement has to be even more detailed, containing an appendix with concrete figures, Art. 22.2. VerG. The requirements are the same as for large stock companies.

- donation collecting associations:

  If an association has collected donations exceeding one million Euros in two successive years, it has to present a reviewed and certified extended annual financial statement including an appendix to confirm that the donated money is used according to the statutory purpose. The amount and the use of member fees as well as public funds and donations have to be published.

Power of monitoring body:

The authority can arrange the liquidation of the association in case it is violating any penal law, acting contrary to its statutes or does no longer meet the conditions of its legal existence.

Frequency:

Annual

(b) Foundations

(i) Private Foundations

Monitoring body:

It is a certificated auditor appointed by the court to control private foundations, Art. 20 PStG.

Monitoring standards:

The certificated auditors "Stiftungsprüfer" examine the annual report including the balance sheets and the activity report of the board.

The court can also rule a special audit if there is a suspicion of any irregularity (Art. 31 PStG).

Power of monitoring body:

The monitoring body must inform the court; the court can decide to dissolve the foundation.

Frequency:

Annual

(ii) Public benefit foundations

Monitoring body:

According to Art. 13 BSFG, public benefit foundations are subject to supervision by the relevant foundation authority to control the maintenance of the capital stock, the fulfilment of the purpose and proper administration.

Monitoring standards:

The public benefit foundation has to provide the authority with annual balance sheets.

Power of monitoring body:

The foundation authority can at any time inspect the administration of the assets according to Art. 14.4 BSFG.

It can dissolve the foundation in case that there are no more assets, the assets are insufficient or the purpose cannot be fulfilled (Art. 20 BSFG).

Frequency:

Annual

(c) NPO

Monitoring body:

There is no special governmental monitoring for NPOs.

But NPOs that are accredited with by OSGS are monitored by the OSGS.

Monitoring standards:

The OSGS monitors the compliance with the standards and the reporting requirements.

Requirements:

- Correctness of accounting
- Internal control system respectively of development, also the separation between management and control tasks
- appropriate use of the donations in accordance with the statutory and the dedication (i.e. the advertising measures)
- Adherence to the principles of thriftiness and economy
- Financial policy in the appropriation of donations
- Personnel management of the organisation
- Integrity of the advertisement and regulation of its responsibility (correct and ethical fundraising)

When requested, a donor receives an annual report made available by the organisation containing the profile and the denomination of the responsible persons for the use of the donations, donation advertisement and data security, a conclusive and complete representation of the donation incomes and donation uses. The report has to be open to the public and published on the web page of the NPO.

Power of monitoring body:

The OSGS can deprive the NPO of the Seal.

Frequency:

Annual

(d) Funds

See public benefit foundations under Chapter 3.4.2.1. (b)(ii) on page 127.

4.2.2. Belgium

(a) Associations

(i) Non-profit associations

Monitoring body:

Every non-profit association is monitored by the commercial court. Large associations are additionally monitored by the National Bank of Belgium.

Monitoring standards:

A file on each entity is kept at the competent court.

Every non-profit association has to keep annual accounts that have to be approved by its general assembly and submitted for the dossier kept at the commercial court.

There are additional rules for larger associations:

- An association has to keep annual accounts according to the rules for companies in case it fulfils two or more of the criteria enumerated in Art. 17 § 3 Loi du 1921-06-27 (large association): 5 full time workers on the yearly average; 250.000 Euro total return (except the items free of VAT); 1.000.000 Euro total of balance. In this case the associations also have to file their accounts, detailed information on board members and the report of the accountants to the National Bank of Belgium ("Banque National de Belgique"), Art. 17 § 6 Loi du 1921-06-27.

- The financial report of very large public utility associations (that fulfil at least two of the following criteria: 50 fulltime worker on the yearly average; 6.250.000 Euro total return; 3.125.000 Euro total of balance) has to be reviewed by accountants, Art. 17 § 5 Loi du 1921-06-27.

Donations over 100,000 Euros that do not consist of hand to hand donations ("dons manuels") must be approved by the King. (Art. 16 Loi du 1921-06-27)

Power of monitoring body:

The court has the right to control whether the board acts in compliance with the law and administers the association according to the statutes and is entitled to dismiss the administrators (Art. 43 Loi du 1921-06-27).

There is the possibility for the commercial court to dissolve the association (Art. 18 Loi du 1921-06-27) if:

- it is not able to conduct the activities for which is was founded

- it is spending the patrimony or the returns on other then its statutory purposes

- it does not satisfy the obligation to deposit the annual balance sheet with the civil court in three consecutive accounting periods or

- it is acting against the statutes, the law or the public order

- has no longer more than three members

Frequency:

Annual

(ii) International non-profit associations

Monitoring body:

The Ministry of Justice and the court exercise the supervision of international non-profit associations.

Monitoring standards:

They can examine the way it is managed and ensure that the assets are used for the statutory purpose.

(b) Foundations

Monitoring body:

Private foundations are monitored by the competent court. The monitoring body for public utility foundations is the Ministry of Justice.

Monitoring standards:

A file on each entity is kept at the local court.

Every foundation must keep annual accounts according to the rules for companies.

There are special rules for larger foundations:

- In case they fulfil two or more of the criteria enumerated in Art. 37 § 3 Loi du 1921-06-27 (5 full time workers on the yearly average; 250.000 Euro total return (except the items free of VAT); 1.000.000 Euro total of balance) the foundations also have to file their accounts, detailed information on board members and the report of the accountants to the National Bank of Belgium ("Banque National de Belgique"), Art. 37 § 6 Loi du 1921-06-27.

- The financial report of large foundations (that fulfil at least two of the following criteria: 50 fulltime worker on the yearly average; 6.250.000 Euro total return; 3.125.000 Euro total of balance) has to be reviewed by accountants, Art. 37 § 5 Loi du 1921-06-27.

Donations over 100,000 euros that do not consist of hand to hand donations ("dons manuels") must be approved by the King. (Art. 33 Loi du 1921-06-27)

Power of monitoring body:

The court has the right to control whether the board acts in compliance with the law and administers the foundation according to the statutes and is entitled to dismiss the administrators (Art. 43 Loi du 1921-06-27).

The Ministry of Justice can examine the way a public utility foundation is managed and ensure that the assets are used for the purpose of the foundation.

According to Art. 39 Loi du 1921-06-27 the competent court can dissolve a foundation if it does not satisfy the deposit obligation in three consecutive accounting periods, if its aim is reached or it has become impossible to reach, if it is using its patrimony for other purposes than the one for which it was founded or if it is acting against the statutes, the law or the public order.

Frequency:

Annual

(c) NGO for Development

Monitoring body:

The Ministry of Foreign Affairs monitors the accredited NGOs for Development.

Monitoring standards:

The Ministry of Foreign Affairs monitors, pursuant to Art. 5 §§ 1, 2 Arrêté royal du 1997-07-18:

- if the NGO no longer corresponds to the acknowledgment requirements

- if it is violating the "Arrêté royal du 1997-07-18"

- if it is defying control

Power of monitoring body:

The Ministry can suspend and deprive the recognition and suspend the granting of subsidies.

Frequency:

Not regular

(d) Company with social purpose

There is no special monitoring for companies with social purpose; the commercial court exercises only the supervision on the compliance with the regulations of the Commercial Code.

(e) AERF accredited organisations

Monitoring body:

The AERF monitors the accredited organisations.

Monitoring standards:

The AERF monitors the compliance of the organisations' activities with the "Code of Ethics"

Powers of monitoring body:

The AERF can deprive the label.

Frequency:

Not regular

4.2.3. Denmark

(a) Associations

(i) Commercial associations

Monitoring body:

Commercial associations are monitored by the local fiscal authority.

Monitoring standards:

Commercial associations have to establish audited annual accounts according to the bookkeeping rules, Art. 50 FEL.

Power of monitoring body:

There was no information available.

Frequency:

Annual

(ii) Non-profit associations

Non-profit associations are not monitored.

(b) Foundations

(i) Non-profit foundations

Monitoring body:

The Ministry of Justice is responsible for the supervision of non-commercial foundations according to Art. 36 FFL. In practice, the Ministry delegates the supervision activities to the "Civilretsdirektorat" (local civil authority).

Monitoring standards:

Non-commercial foundations have to submit yearly accounts to the foundations register, Art. 22.2. FEL. Foundations with capital equipment not exceeding DKK 200,000 may be exempt from the requirement to submit the accounts to the register. The foundation supervision authority can also require this information. Every foundation must have an accountant or auditor. Larger foundations (assets exceeding DDK 3 million, approximately 800,000 euros) need a qualified independent auditor, Art. 23 FEL.

Power of monitoring body:

There was no information available.

Frequency:

Annual

(ii) Commercial foundations

Monitoring body:

The Ministry of Commerce supervises commercial foundations.

Monitoring standards:

Commercial foundations have to keep audited annual accounts according to Art. 28 EFL.

Power of monitoring body:

There was no information available.

Frequency:

Annual

(c) NGO for Development

There is no information available in English about monitoring of NGOs for Development, e.g. by the Danida.

4.2.4. Finland

(a) Associations

Monitoring body:

Associations are monitored by the local civil court.

Monitoring standards:

An association shall have a minimum of one auditor and one deputy auditor to audit the

association in accordance with the rules of the Audit Act.

Power of monitoring body:

The court of first instance of the domicile of an association may on the basis of an action brought by the Ministry of the Interior, the Public Prosecutor or a member of the association declare the association terminated (Section 43 Associations Act):

- if the association acts substantially against the law or good practice
- if the association acts substantially against the purpose defined in its rules
- if the association acts in violation of the permission according to the Associations Act

If the public interest does not require termination of the association, the association may be cautioned instead of being terminated.

Frequency:

Not regular

(b) Foundations

Monitoring body:

The "National Board of Patents and Registration" exercises the supervision of foundations.

Monitoring standards:

The foundation shall have a minimum of two auditors and two deputy auditors to audit its accounts and administration.

At least one of the auditors and his deputy shall be a certified auditor unless the Ministry of Trade and Industry grants an exception for special reasons. In addition to what is provided in the provisions of the Auditing Act, the audit report shall contain a specific statement on:

- whether the assets of the foundation have been properly invested
- whether the fees paid to the members of the bodies of the foundation are to be deemed reasonable
- whether the annual accounts and the annual report give a true and fair view of the finances and activities of the foundation

The National Board of Patents and Registration shall supervise that the administration of the foundation complies with the law and the by-laws of the foundation.

The foundation shall submit certified copies of its income statement and balance sheet and their appendices, and of the itemisation of the balance sheet and its annual report and audit report. When necessary for its supervision, the foundation shall submit also other information on its activities to the National Board of Patents and Registration.

Power of monitoring body:

For special reasons, the National Board of Patents and Registration shall have the right to audit the books and administration of the foundation as well as make other inspection of its activities. Upon the request of the National Board of Patents and Registration, an auditor of the foundation shall give to the National Board of Patents and Registration, information on the activities of the foundation that he has learned in the course of his duties.

It may impose the threat of a fine to enforce the order or injunction on the foundation and it can make a request to the court to take further action.

The Ministry of Interior can revoke the registration if the organisation is acting against the statutes or the law.

Frequency:

Annual

(c) NGO for Development

Monitoring body:

The Ministry of Foreign Affairs supervises NGOs for Development.

Monitoring standards:

The NGOs must submit an annual report concerning the activities and use of funds including the balance sheet and the financial report by an auditor.

Power of monitoring body:

In case the NGOs do not adhere to the standards, the Ministry can set a date by which the conditions have to be met, suspend the payment and claim the paid support to be returned.

Frequency:

Annual

(d) Money Collection

Monitoring body:

The Ministry of the Interior is responsible for supervising money collection activities and for compiling statistics on the conduct of money collections.

Monitoring standards:

The Ministry may issue statements and instructions on the conduct of money collections. The licence holder must render accounts of a money collection conducted and submit the accounts to the licensing authority within three months of the termination of the collection.

Power of monitoring body:

There was no information available.

Frequency:

Within 3 months after the end of a collection.

4.2.5. France

(a) Associations

(i) Non-profit associations

Monitoring body:

The local court of first instance supervises the legality of the association.

Monitoring standards:

Any association created for an illegal cause or purpose, contrary to the law, morality, or for the purpose of threatening the integrity of the national territory or the republican form of the government, is not valid. If the Prefect deems that these conditions apply to an association after having issued the receipt, he must refer the matter to the local court of first instance.

Associations are required to draw up audited accounts in the following cases:

- Associations that received subsidies from the government or the public exceeding 153.000 Euro per year. The accounts can eventually be consulted by the administrative authority (Art. L612-4 Code de Commerce).
- Associations that conduct business activity and meet two of the following criteria: annual turnover in excess of 3 million Euro, total assets of more than 1.5 million Euro, more than 50 employees

Power of monitoring body:

The court can declare the association void. This means that the court shall order it to be legally disbanded. The court may also act on a petition from any interested party (Art. 7 Loi du 1 juillet 1901)

Frequency:

Not regularly for the court supervision; the accounts have to been drawn up annually.

(ii) Non-profit association with recognised public benefit purpose

Monitoring body:

The local Prefect, the Minister of Interior and the Ministers concerned supervise the non-profit associations with recognised public benefit purpose.

Monitoring standards:

Associations must file activity reports and annual financial statements (income statement, balance sheet and notes to the financial statements drawn up) with the local Prefect, with the Minister of Interior and with the Ministers concerned.

They have to draw up audited annual accounts.

Power of monitoring body:

The sanctions in case of not fulfilling the requirements are a ban on accepting a legacy, a challenge to the recognised status of the association or the withdrawal of this status.

Frequency:

Annual

(b) Foundations

(i) Public utility foundations

Monitoring body:

The Ministry of Interior and the "Préfet du Département", the local Prefect, exercise the supervision of the public utility foundations after their establishment.

Monitoring standards:

According to the model by-laws, donations and legacies to foundations as well as the selling of movable and immovable property must be approved by the state. Art. 16 of the model by-laws require that all public utility foundations to submit an annual report and financial statement to the competent Prefect and the Ministry of Interior.

Power of monitoring body:

In addition to fiscal sanctions, foundations can be deprived of the public utility status, which leads automatically to their dissolution.

Frequency:

Annual

(ii) Corporate foundations

Monitoring body:

Corporate foundations are monitored by the local administrative authority.

Monitoring standards:

Corporate foundations have to provide an annual activities report as well as annual accounts and the report of the auditor to the administrative authority.

Power of monitoring body:

There was no information available.

Frequency:

Annual

(c) NGO

Monitoring body:

There are audits carried out from time to time by two types of governmental institutions which monitor only some organisations each year (less than ten): the "Cour des comptes" (Court of auditors/General Account Office) and The "Inspection générale aux affaires sociales" (IGAS – General inspection for social affairs).

Monitoring standards:

The institutions monitor only entities which benefit from public subsidies.

The "Cour des comptes" verifies the correspondence between income (especially public subsidies and appeals to public generosity) and the use of these funds (financial statements, no misappropriation)[249].

The "Inspection générale aux affaires sociales" exercises more or less the same kind of monitoring, but only for social organisations and the "Inspection générale de l'administration de l'éducation nationale et de la recherché" does the same for education and research organisations.

Power of monitoring body:

The monitoring institutions can stop the governmental subsidies.

[249] http://www.ccomptes.fr, 3 March 2005.

Frequency:

Not regular

(d) Organisations accredited with the "Comité de la Charte de déontologie"

Monitoring body:

The "Comité de la Charte de déontologie des organisations sociales et humanitaires faisant appel à la générosité du public" monitors the accredited NPOs.

Monitoring standards:

They check compliance with the principles of their 'Charter'. The goal is to know whether the monitored organisations are transparent in their activities, in their financial statements and in their internal organisation.

Major principles:

- statutory functioning and non-profit management
- quality of communication
- rigor of management
- financial transparency
- application of the charter

Power of monitoring body:

Organisations that do not fulfil the standard lose the accreditation.

Frequency:

The seal is awarded for three years, but nevertheless the monitoring is conducted annually.

4.2.6. Germany

(a) Associations

Associations are not monitored.

Local authorities can deprive the association of its legal capacity if an economical working association compromises the common welfare through resolutions of its organs or if a non-profit association pursues such aims.

(b) Foundations

Monitoring body:

Civil law foundations are subject to state control according to the respective laws of the "Bundesländer". Each state has its own supervisory system.

Example for Bavaria:

The supervisory bodies "Stiftungsaufsichtsbehörden" in Bavaria are the various ministries depending on the purpose of the foundation.

Monitoring standards:

Generally speaking the supervision authority has to ensure that the statute and activities of the foundation do not contravene the law and that the will of the founder is observed. The state authority has the right to be informed.

Bavarian foundations have to (Art. 20 BayStG):

- ensure that the statute and activities of the foundation do not contravene the law
- ensure that the will of the founder is observed
- audit that the assets of the foundations are sustained

According to Art. 25 BayStG the foundations have to submit annual accounts and activity reports to the supervisory body which verifies the accounts.

Power of monitoring body:

There was no information available.

Frequency:

The checks normally are carried out annual; if the annual checks are not considered as necessary by the supervision bodies their frequency can be reduced to random samples.

(c) Organisation with charitable, benevolent or churchly purposes in accordance with §§ 51 ff AO

Monitoring body:

The local tax authorities supervise the charitable organisations.

Monitoring standards:

To grant tax relief in accordance with §§ 51 ff AO the tax authorities are able to directly inspect the balance sheets of the organisation and can supervise the use of funds.

In recognizing the charitable nature, the authorities normally restrict themselves to a pure plausibility control of the respective statutes (i.e. the stated objectives of the organisation). However, subsequent follow-up examinations also consider the financial books.

Power of monitoring body:

The authority can nullify of the tax exempt status of an entity that does not fulfil the requirements.

Frequency:

Annual

(d) Organisations accredited with the Deutsches Zentralinstitut für soziale Fragen

Monitoring body:

The DZI monitors its accredited organisations.

Monitoring standards:

DZI is monitoring whether the organisations adhere to the DZI standards.

Power of monitoring body:

The DZI can refuse the reapplication of the Seal.

Frequency:

The seal is only given for the duration of one year and must be requested again.

4.2.7. Greece

(a) Associations

Monitoring body:

The Prefect is the administrative authority in charge for monitoring the associations.

The local tax authority monitors the revenue.

Monitoring standards:

The associations as well as all other legal entities have to submit a revenue declaration with the local tax authority every year.

Power of monitoring body:

Frequency:

Annual

(b) Foundations

(i) Private law foundations

Monitoring body:

The Council of National Bequests or the competent Ministry (for public benefit foundations it is the Ministry of Finance) exercises the supervision of the foundations.

Besides, foundations are subject to supervision by the local tax authority just as associations are.

Monitoring standards:

For all foundations, monitoring is restricted to the check for compliance with the statutes and the general provision of the law.

Public benefit foundations have to submit their statutes to the Ministry, Art 98 Law 2039/1939. According to Art. 101, 102 Law 2039/1939 the activities of the organisations have to be in agreement with the annual budget plan that has been authorised by the Ministry. After the closing of every budget year they have to give a summary of the compliance of the activities with the budget plan.

Power of monitoring body:

The board members can be dismissed if they do not adhere to the statutes. Furthermore the foundation can be dissolved if the capital is not used in accordance with the statutes, if the purpose has been reached or has become unable to reach or if the organisation is acting in an illicit way, Art. 118 Civil Code.

Frequency:

Foundations in general are not regularly monitored; however, public benefit foundations are subject to annual monitoring.

(ii) Non-autonomous foundations

Non-autonomous public benefit foundations are subject to supervision as the public benefit foundations having legal capacity, Art 95, 104 Law 2039/1939.

(c) NGO for Development

Monitoring body:

Hellenic Aid monitors its accredited NGOs.

Monitoring standards:

There was no information available.

Power of monitoring body:

Hellenic Aid retains the right to cease program financing and immediately call off implementation in cases of 'force majeure' or if NGO members are in danger. In these cases, the NGO is obliged to refund unused funds to Hellenic Aid, in accordance with the fixed regulations on public expenditures.

Frequency:

not regular

4.2.8. Ireland

(a) Associations

Monitoring body:

Associations do not exist as legal form in Ireland and are not monitored. Only associations organised as companies are monitored by the Companies registration office.

Monitoring standards:

Companies limited by guarantee have to submit annual reports and accounts to the registration office.

Power of monitoring body:

There was no information available.

Frequency:

Annual

(b) Foundations

See Associations under Chapter 3.4.2.8. (a) on page 136.

(c) NGO for Development

Monitoring body:

DCI will audit and evaluate a cross-section of projects each year.

Monitoring standards:

Applicants will be required to cooperate with DCI in carrying out evaluations and audits and to provide access to all relevant documents as requested.

The satisfactory submission of reports is a condition for consideration of future applications. A completion report and a detailed statement of expenditure are required within one year of receipt of grant assistance.

Reports should explain:

- progress made towards the achievement of project aims
- the manner in which the community members participated and what structures (if any) were established to enable participation
- problems and challenges encountered
- details, number and gender of beneficiaries

- arrangements for future sustainability
- the outcome of a formal evaluation if any
- changes and adjustments, if any, to the original proposal
- financial report showing income (including from other donors) and expenditure

Power of monitoring body:

NGOs for Development that do not complete the monitoring standards may be excluded from further subsidies.

Frequency:

Annual but only random selection of projects

(d) Charity

Monitoring body:

At the Moment there is no monitoring of the charities.

Under the Draft Charities Bill, charities will be monitored by the regulatory body.

Monitoring standards:

Under the new legislation, registered charities will be required to fill in annual returns with the regulatory body.

Power of monitoring body:

In the future, where the regulatory body, to be set up under the new legislation, finds evidence of fraud, mal-administration or other misconduct, it is envisaged that the body will have statutory powers to:

- strike the charity concerned off the register
- prosecute summarily on its own initiative, or
- forward a file to the Director of Public Prosecution where an indictable offence had been committed.

The regulatory body would, further, be given the option of exercising intermediate sanctions, e.g., a remedial agreement, publicity, or a financial penalty. The regulatory body could thus exercise intermediate sanctions, short of de-registration, where appropriate.

Frequency:

Annual

4.2.9. Italy

(a) Associations

Monitoring body:

Associations are monitored by the prefecture or the administration of the region, depending on the field of activity.

Monitoring standards:

The authority can ask for yearly financial and activity reports.

Power of monitoring body:

The administration has a general power of inspection of the activity of the association. In the case of misconduct and ineffectiveness, the administration has the power of intervention. It can also dissolve the association. In theory this power is very wide. In practice it is not widely used.

Frequency:

Not regular

(b) Foundations

For foundations the same monitoring rules apply as for associations (see under Chapter 3.4.2.9. (a) on page 137).

(c) NGO

There is no real monitoring by the different Ministries. They can only revoke the registration if the register-requirements are no longer fulfilled.

(d) NPO

Monitoring body:

The "ONLUS Agency" is entrusted to exert control over non-profit organisations.

Monitoring standards:

It has competences of direction, promotion, supervision and inspection in order to ensure the correct observation of legal rules and regulation concerning not only ONLUS but all non-profit organisations. It monitors fund-raising activities performed by the entities to ensure the compliance with legal rules and regulations. At the moment supervision is not widely practiced.

Power of monitoring body:

The ONLUS Agency can make demands on the Revenue Agency to perform specific checks to verify the legitimacy of tax benefits requested or enjoyed by non-profit organisations. In the case of non-compliance, the Revenue Agency can reclaim the tax benefits as well as demand the removal of the organisation of the ONLUS register.

Frequency:

Not regular

(e) ONLUS

Monitoring body:

ONLUS are monitored by the "ONLUS Agency" like every non-profit organisation. Besides, the Revenue Agency exercises the fiscal control of the ONLUS.

Monitoring standards:

The Revenue Agency checks both, the formal requirements for receiving tax exemption and the substantive measures against tax evasion.

Power of monitoring body:

In the case of non-compliance, consequences can include recovery of taxes, interests and sanctions as well as the removal from the ONLUS register. The Agency has to report any suspect to the competent judicial authority.

There is collaboration between the ONLUS Agency, the Revenue Agency and the Italian FIU ("Ufficio Italiano dei Cambi").

Frequency:

Not regular

(f) Voluntary Organisations

Law 266/1991 established the National Overseeing Body (Osservatorio nazionale) for the voluntary sector. The Ministry of Labour and Social Policies presides over the Overseeing Body; it supervises the voluntary sector.

4.2.10. Luxembourg

(a) Associations

Monitoring body:

All associations are monitored by the local civil court. Public utility associations are monitored by the Ministry of Justice.

Monitoring standards:

The Ministry of Justice verifies that the public utility association deposited the required documents with the "Registre de Commerce et des Sociétés" (RCS) and satisfies the requirements of Art. 26-2 Law on foundations and non-profit making associations.

Power of monitoring body:

The civil court of the registered seat of the non-profit making association has the power to declare the dissolution on request either of an associate, of a third of the interested persons, or of the Ministry of Public, if the associations is not able to fill the engagements that it assumed, if it debits its patrimony or the incomes of the patrimony for objects other than its declared purposes or if it contravenes seriously its statutes, the law or the public order.

Frequency:

Not regular

(b) Foundations

Monitoring body:

The authority in charge of supervision of foundations is the Ministry of Justice (Art. 40, 41 Law on non-profit making associations and foundations) and the local civil court.

Monitoring standards:

The Ministry of Justice has to ensure that the assets of the foundations are used for the purpose for which they were created. Therefore the foundation has to submit annual accounts and budgets to the Ministry (Art. 34)

Power of monitoring body:

The civil court of the registered seat of the foundation can dismiss the administrators when they act imprudently or contrary to their legal or statutory obligations or when they have not used the assets according to the statutes. New administrators are then appointed according to the statutes or, if the court decides, by the Ministry of Justice.

The Civil Court has the power to dissolve a foundation if it is unable to pursue the purpose for which it was created.

Frequency:

Annual

(c) NGO for Development

Monitoring body:

NGOs for Development are monitored by the Ministry of Foreign Affairs.

Monitoring standards:

The Ministry checks the compliance with the standards.

Power of monitoring body:

The Ministry of Foreign Affairs can refuse to renew the acceptance of NGOs for development. The acceptance by the ministry is given for 1 year.

Frequency:

Annual

4.2.11. The Netherlands

(a) Associations

Monitoring body:

Associations are under the supervision of the Public Prosecutor's Office and the local court "arrondissementsrechtsbank".

Monitoring standards:

Power of monitoring body:

The prosecutor can request information of the board in case of serious doubts about the compliance with the law or statutes or about the proper functioning of the management of the entity, Art. 2:297.2 Civil Code. If the request is denied, the prosecutor can ask a court to compel the entity to provide access to the relevant records and documents.

The court can also, on request of the prosecutor or any interested party, dismiss the directors or board members whose actions are incompatible with the law or statutes.

The court can dissolve the entity at the request of an interested party or the public prosecution service if (Art. 2:301 Civil Code):

- the foundations assets are no longer sufficient to realise the aim and the possibility of obtaining means by contributions or in other manners is improbably
- the aim of the foundation has been reached or has become impossible to reach

Frequency:

In case of suspicion

(b) Foundations

Foundations are subject to the same monitoring as associations (see under Chapter 3.4.2.11. (a) on page 139).

(c) CBF accredited organisations

Monitoring body:

The CBF monitors its accredited organisations.

Monitoring standards:

The scope of the monitoring is to give information, collect data and documentation in order to encourage responsible raising and spending of funds for charitable causes. The main focus of CBF is to make sure that no more than 25 % of fund raising income is spend on fund raising cost. Moreover, the CBF also checks the internal organisation, procedures and controls of the entities.

Power of monitoring body:

There was no information available.

Frequency:

The Seal is awarded for five years.

4.2.12. Portugal

(a) Associations

Monitoring body:

The civil court monitors associations.

Monitoring standards:

All financial reports and records must be kept and made available for tax department review. They do not have to be submitted to the administrative authority.

Power of monitoring body:

The court can dissolve the association if (Art. 182.2 Civil Code)

- the aim is reached or became impossible to reach
- the aim does no longer match with the aim set out in the statutes or the act of constitution
- illicit or immoral methods are used
- it is working against the public order

Besides, the Public Prosecution Office or anyone interested can demand the dissolution in these cases to the court, Art. 183 Civil Code.

Frequency:

Not regular

(b) Foundations

Monitoring body:

The foundations are monitored by the civil court.

Monitoring standards:

All financial reports and records must be kept and made available for tax department review. They do not have to be submitted to the administrative authority.

Power of monitoring body:

The court can dissolve the foundation according to Art. 192.2 Civil Code, if:

- the aim is reached or has become impossible to reach
- the aim does no longer match with the aim set out in the statutes or the constituting act
- illicit or immoral methods are used
- it is working against the public order

Frequency:

Not regular

(c) Entities recognised for public utility

Monitoring body:

The President of the Council of Ministers monitors the entities (associations and foundation) for public utility.

Monitoring standards:

Entities for public utility have to submit an annual report and annual accounts to the President of the Council of Ministers and provide any required information to the government or any authority.

Power of monitoring body:

There is no consequence if they do not fulfil the requirement.

Frequency:

Not regular

(d) NGOs for Development

Monitoring body:

The Ministry of Foreign Affairs monitors the registered NGOs for Development.

Monitoring standards:

The ministry check the compliance with the standards, i.e. that the NGO's activities are in conformity with the statutes, the activity plan and the financial plan.

Power of monitoring body:

The ministry can revoke the registration if the requirements are no longer fulfilled.

Frequency:

The recognition by the Ministry is given for two years.

4.2.13. Spain

(a) Associations

(i) Associations

Monitoring body:

The administration can exercise a supervisory role when giving subsidies or technical assistance.

Monitoring standards:

Power of monitoring body:

The competent authority can suspend an association working against the law.

Frequency:

Not regular

(ii) Associations for public utility

Monitoring body:

Local administrative authority monitors associations for public utility.

Monitoring standards:

Associations for public utility have to fill in audited annual accounts and to present a descriptive memory of the activities. The annual accounts must express the faithful image of heritage, of the results and the financial situation, as well as the origin, quantity, destination and implementation of the perceived public income.

Associations for public utility have to keep the identifying documents of every person who has received resources from the association for six years. These documents will be at the disposal of the Commission of Surveillance of Terrorist Financing Activities and the administrative and judicial authorities.

Power of monitoring body:

If the organisations do not fulfil these requirements, the competent authority can annul the recognition as public utility association.

Frequency:

Annual

(b) Foundations

Monitoring body:

The "Protectorados" (state supervisory authorities) monitor the foundations.

Monitoring standards:

The "Protectorados" control that the foundation acts according to the statutes and the law and to assure that the economic resources apply to the goals of a foundation. Foreign foundations that have activities in Spain on a regular basis are also under their supervision.

Foundations must present annual action plans to the appropriate administrative authority which gives a chronological pursuit of the conducted operations.

An external annual audit is required of those foundations that meet two of the following circumstances:

- The total amount of the asset's entries is over 2,400,000 euros
- The total net amount of the annual turnover is over 2,400,000 euros
- The average number of working staff is over 50.

In order to simplify the management and accountability of smaller foundations the Law authorizes them to use an abbreviated formula for accounting and the annual report. Therefore they have to meet two of the following circumstances:

- the total amount of the asset's entries that appears in the balance model does not surpass 150,000 euros.
- the amount of the annual volume of income by the own activity, more, in their case, the one of the number of businesses of their mercantile activity, is less than 150,000 euros.
- the average number of workers used during the activities is less than 5.

(Art. 25 Foundations Act)

Foundations have to keep the identifying documents of every person who has received resources from the foundation for six years. These documents will be at the disposal of the Commission of Surveillance of Terrorist Financing Activities and the administrative and judicial authorities.

Power of monitoring body:

The "Protectorados" can inform the foundations and pass the information to the public prosecutor/competent juridical authority if they consider that there are reasonable indications of a criminal activity. Even the protectorate could temporarily take the administration of a foundation when it detects a serious irregularity in the economic management which could endanger the existence of the foundation, or an incompatibility between the goals and the activities of the foundation.

Frequency:

Annual

(c) NGO

Monitoring body:

The AECI "Agencia Española de Cooperación Internacional" is monitoring the registered NGOs.

Monitoring standards:

There was no information available.

Power of monitoring body:

The AECI can cancel the registration if the register-requirements are not longer fulfilled.

Frequency:

4.2.14. Sweden

(a) Associations

No information available in English.

(b) Foundations

Monitoring body:

The local County Administrative Court ("länsstyrelsen") at the legal seat of the foundations administration monitors the foundations, Ch 9, § 1 SL.

Monitoring standards:

Monitoring includes the control (e.g. request of information, participation in board-meetings, inspections at the site of the foundation), the taking of necessary actions as well as to render service, Ch. 9 § 4 SL.

Entirely, the County Administration has to make sure that the foundation does not violate the Foundations Act or its deed.

According to Ch. 9, § 10 SL foundations that haven't been conducting commercial activities for the last three years, that are established by the government or administrated by the state are not subject to the supervision of Ch 9, §§ 3-5 SL.

Foundations are obliged to maintain accounting records if they

- carry on business activities
- are parent foundations
- haven been founded by the state or local authority or
- have assets which exceed 370,000 SEK (ca. 41,000 Euro)

These foundations also have to close the records by an annual report that has to be published. Only foundations with assets exceeding 307,000 SEK that are only used for the benefit of one family, do not have to establish an annual report (Bookkeeping Act, Ch. 2 § 3, Ch. 6 § 1).

The accounting and the annual report have to be audited. The auditor has to be a certified public accountant in case

- the foundation is obliged to provide records in accordance with the Bookkeeping Act (Ch. 4, § 4.1. SL)
- the total return of the annual accounts exceeds the base amount of the law 1962:381 more then 1000times (Ch. 4, § 4.2.1. SL)
- the average number of employees exceeded 200 during the last two years (Ch. 4, § 4.2.2. SL)
- of official directive (Ch. 4, § 4.2.3. SL)

The audit report has to be published by delivering to the Registration authority (Ch. 9 § 4 SL)[250].

Power of monitoring body:

The authority has to interfere if there is the suspicion of irregularities in the foundations administration. Therefore it can release orders against the board members or the administrators as well as take decisions on their behalf and dismiss them, Ch. 9 §§ 3, 5 SL.

Frequency:

Not regular

(c) SIDA accredited organisations

Monitoring body:

"Styrelsen för Internationellt Utvecklingssamarbete" (SIDA) inspects NGOs that have received funds from SIDA.

Monitoring standards:

The NGOs have to hold a separate bank account for SIDA funds. They have to submit project and financial reports to SIDA; the financial reports shall be audited by a certified auditor.

For all grants there shall be an unbroken chain of reports and associated audit certificates up to and including the final organisation in receipt of the grant. The auditing has to stick to the general auditing rules and the SIDA's audit instructions.

Reports, accounts and other relevant documentation shall remain available to SIDA and to government auditors for a period of 10 years after the final disbursement[251].

Power of monitoring body:

SIDA is entitled to visit, audit and/or evaluate every project financed fully or partly by funds from SIDA.

Frequency:

Not regular

(d) SFI accredited organisations

[250] JAI/D2/NSK(2004)8301, answer Sweden, question 6, 9, 10; Hemström in Hopt/Reuter, Sweden, p.464 ff.

[251] www.sida.se/content/1/c6/01/79/58/Reviderad%20SIDA3056en_General%20ConditionsWEB%20okt%202003.pdf, 1 December 2004.

Monitoring body:

The "Stiftelsen för Insamlingskontroll" (SFI) monitors the owners of the accounts with the starting number 90.

Monitoring standards:

The monitoring shall make sure that:

- there is proved accountancy
- the costs of fundraising are reasonable
- not more than 25 % of the funds are spent for administration
- sound marketing methods are used
- raised money is used in accordance with the aims of the organisation

Power of monitoring body:

In case of irregularities, the account can be deprived

Frequency:

Accounts are allocated for three years; but SFI can investigate on organisations anytime

4.2.15. United Kingdom

(a) Associations

Monitoring body:

The Companies House monitors all companies, including associations, foundations and every other type of organisations that is incorporated[252].

Monitoring standards:

Every company must deliver an annual return to Companies House.

An annual return must contain the following information:

- the name of the company;
- its registered number;
- the type of company it is, for example, private or public;
- the registered office address of the company;
- the address where certain company registers are kept if not at the registered office;
- the principal business activities of the company (see Principal Business Activities);
- the name and address of the company secretary;
- the name, usual residential address, date of birth, nationality and business occupation of all the company's directors;
- the date to which the annual return is made-up (the made-up date).

If the company has share capital, the annual return must also contain:

- the nominal value of total issued share capital;
- the names and addresses of shareholders and the number and type of shares they hold or transfer from other shareholders.

All limited and unlimited companies, whether or not they are trading, must keep accounting records. Generally, accounts must include:

- a profit and loss account (or income and expenditure account if the company is not trading for profit);
- a balance sheet signed by a director;
- an auditors' report signed by the auditor (if appropriate);
- a directors' report signed by a director or the secretary of the company;
- notes to the accounts;
- group accounts (if appropriate).

All limited and public limited companies must send their accounts to the Registrar (i.e. the Financial Services Authority)

[252] http://www.companieshouse.gov.uk/about/gbhtml/gba2.shtml, 22 November 2004.

Unlimited companies need only deliver accounts to the Registrar if, during the period covered by the accounts, the company was:

- a subsidiary or a parent of a limited undertaking; or
- a banking or insurance company (or the parent company of a banking or insurance company); or
- a 'qualifying company' within the meaning of the Partnerships and Unlimited Companies (Accounts) Regulations 1993; or
- operating a trading stamp scheme.

Unincorporated organisations generally are free of the statutory controls to which companies are subject, and are thus not required to make any form of annual report.

Power of monitoring body:

There was no information available.

Frequency:

Annual

(b) Foundations

Incorporated foundations are subject to the same monitoring rules as incorporated associations (see under Chapter 3.4.2.15. (a) on page 144).

(c) Registered friendly societies

Monitoring body:

Registered friendly societies are monitored by the registration authority.

Monitoring standards:

They have to submit accounting documents as well as annual reports (containing revenue statements, audited accounts, the name of all members and all information requested by the authority)

Power of monitoring body:

There was no information available.

Frequency:

Annual

(d) Charities

(i) England and Wales

Monitoring body:

The Charities Commission is monitoring the charities compliance with charity law.

Monitoring standards:

All registered charities (except the exempt charities) are subject to the supervisory and investigative powers of the Charity Commission.

For monitoring purposes, smaller charities are required to submit an annual return form to the Commission, which includes inter alia a complete list of trustees and minimal information about income and expenditure.

Charities with an income in excess of £10,000 must not only submit the annual return, but also accompany this with a fuller set of accounts; either audited or independently examined according to whether or not the charity is incorporated.

All charities with an income above £250,000 must submit audited accounts.

The annual report has to:

- explain what the charity's objectives were for the year
- explain what the charity's strategies were for achieving its stated objectives
- describe the activities it undertook in order to achieve those objectives
- demonstrate whether the charity has achieved its objectives during the year
- explain its plans for the future
- help readers to relate the numerical part of the accounts to the organisational structure and activities of the charity

All charities are required to supply on request a copy of their accounts to an interested member of the public. Certificates of audit/examination form part of the accounts and are also publicly available. They are expected to provide a full audit trail showing how the funds have been spent.

At the point of registration, the individuals proposed as charity trustees by the organisation seeking charitable status are vetted by the Charities Commission. This is to make sure that the individual is not legally ineligible to act as a trustee and to ensure that the individual is not linked to any other cause of concern (e.g. internal checks within the Commission and with the Bank of England for frozen bank accounts). There is a rolling programme of checks on the eligibility of trustees of 900 charities per year, selected on random.

Power of monitoring body:

The Charity Commission can deprive the status as registered charity.

Frequency:

Annual

(ii) Scotland

Monitoring body:

The Office of the Scottish Charity Regulator (OSCR) is an Executive Agency under terms of the Scotland Act 1998. As such, it operates independently and impartially while remaining accountable to the Scottish Ministers. It supervises Scottish charities.

The draft Bill proposes that a single charity regulator should be established in statute. The draft Bill provides for the establishment of the Office of the Scottish Charity Regulator as an independent statutory body.

Monitoring standards:

OSCR's role under the Draft Charities Bill will be to regulate charities proportionately and transparently, in the public interest. It will monitor all charities if they work in compliance with the charities law and if they accomplish their duty of publishing accounts and reports.

Power of monitoring body:

OSCR's powers include the ability to conduct enquiries either generally or for particular purposes, to investigate concerns of mismanagement or misconduct, to suspend trustees and in appropriate cases to bring Court actions. It also has powers to investigate the activities of non-recognised bodies which appears to it to represent themselves as charities and in appropriate cases to seek sanctions in court.

Frequency:

Annual

(iii) Northern Ireland

There is no dedicated charity regulator in Northern Ireland.

There is no routine monitoring of the activities of charitable/non-profit organisations.

Charities must provide accounts covering public charitable collections to the body that authorised the collection (usually the Police) within one month for single collections and annually for ongoing collections. They are not obliged to make their annual reports/accounts available to the public.

4.3. Summary and Table on Monitoring Systems

The monitoring systems that are in use in the Member States can be summarised in the two major categories: governmental or private monitoring systems. In most cases, the governmental monitoring is restricted to activity reports and accounting requirements whereas the private monitoring may be extended also to a general internal control instance for the monitored entity. It has to be noted that many accrediting bodies do also monitor their accredited entities.

The reason why most countries rely on accountability as monitoring criteria for non-profit organisations is easy to understand: reliable organisations are interested in being publicly accountable to create donor's trust; non-reliable organisation on the contrary fear the accountability as it is supposed to reveal their weak points.

The main findings can be summarised as is shown by the following table.

Table 6. Monitoring Systems

Country	Type of Entity	Monitoring Body	Formation	Monitoring Standards	Extent of Power	Frequency
Austria	Association	Local competent authority	Authority	Annual report Auditing Special rules for large entities	Dissolution	Annual
	Foundation	Local court	Authority	Annual report Balance sheets Activity report Audit by Certificated Auditors	Dissolution	Annual
	Foundation for public benefit/Funds	Foundation authority	Authority	Balance sheets	Inspection Dissolution	Annual
	NPO	Österreichisches Spendengütesiegel	Private association	Compliance with OSGS standards Reporting	Deprive the Seal	Annual
Belgium	Association	Commercial court	Authority	Accounts Special rules for large entities	Internal control Dissolution	Annual
	Private Foundation	Local court	Authority	Accounts Special rules for large entities	Internal control Dissolution	Annual
	Foundation for public utility	Ministry of Justice	Authority	Accounts Special rules for large entities	Internal control Dissolution	Annual
	Company with social purpose	Commercial Court	Authority	Compliance with rules for companies		
	NGO for Development	Ministry of Foreign Affairs	Authority	Compliance with requirements	Deprive the acknowledgment Suspend granting	Not regular
	AERF accredited entities	Association pour une Ethique dans les Récoltes de Fonds	Association for public utility	Compliance with "Code of Ethics"	Deprive the label	Not regular
Denmark	Non-profit association	Not monitored	-	-	-	-
	Commercial association	Local fiscal authority	Authority	Accounts Auditing		Annual
	Non-commercial foundation	Local civil authority on behalf of the Ministry of Justice	Authority	Accounts Auditing Special rules for small entities		Annual
	Commercial foundation	Ministry of Commerce	Authority	Accounts Auditing		Annual
Finland	Associations	Local civil court	Authority	Accounts Auditing	Dissolution	Not regular

Country	Type of Entity	Monitoring Body	Formation	Monitoring Standards	Extent of Power	Frequency
	Foundations	National board of patents and registration	Authority	Accounts Auditing Balance sheet Additional information	Internal control Notice to the court	Annual
	NGO for Development	Ministry of Foreign Affairs	Authority	Activity report Balance sheet Financial report Auditing	Suspend granting	Annual
	Money Collection	Ministry of the Interior	Authority	Accounts		Within 3 months
France	Non-profit association	Local court of first instance	Authority	Legality Accounts for large entities	Dissolution	Not regular
	Association with special recognition	Local Prefect on behalf of the Minister of Interior	Authority	Activity reports Financial statements Auditing	Withdrawal of status	Annual
	Public utility foundation	Local Prefect on behalf of the Minister of Interior	Authority	Annual report Financial statement	Deprive status	Annual
	Corporate foundation	Local administrative authority	Authority	Annual report Accounts Auditing		Annual
	NGO	Court of auditors/ General inspection for social affairs	Authority	Use of public funds	Suspend funding	Not regular
	CC accredited entities	Comité de la Charte de déontologie	Private association	Compliance with 'Charter'	Deprive Seal	Annual
Germany	Association	Not monitored	-	-	-	-
	Foundation	Supervisory authority of "Bundesländer"	Authority	Activity report Accounts		Annual
	Organisations with charitable purpose	Local tax authority	Authority	Balance sheets	Deprive status	Annual
	DZI accredited entities	Deutsches Zentralinstitut für soziale Fragen	Private foundation	Compliance with DZI standards	Refuse reapplication of Seal	Annual
Greece	Association	Local prefect	Authority	Accounts		Annual
	Foundation	Council of National Bequests	Authority	Compliance with statutes and law	Internal control Dissolution	Not regular
	NGO for Development	Hellenic Aid	Department of the Ministry of Foreign Affairs		Suspend funding	Not regular
Ireland	Association/ foundation	Companies registration office	Authority	Annual reports Accounts		Annual
	NGO for Development	Development Cooperation Ireland	Department of Foreign Affairs	Activity report Financial statement	Suspend funding	Annual
	Charity	Regulatory body (to be established)	Authority	Accounts	Deprive status	Annual

Country	Type of Entity	Monitoring Body	Formation	Monitoring Standards	Extent of Power	Frequency
Italy	Association/ foundations	Local prefect	Authority	Financial statement Activity report	Internal control Dissolution	Not regular
	NGO	No monitoring	-	-	-	-
	NPO/ ONLUS	ONLUS Agency	Authority	Compliance with statutes and law Special rules for ONLUS	Notice to Revenue Agency	Not regular
	Voluntary organisation	National Overseeing Body	Authority			
Luxembourg	Public utility association	Ministry of Justice	Authority	Compliance with requirements	Dissolution	Not regular
	Foundation	Ministry of Justice	Authority	Accounts	Internal control Dissolution	Annual
	NGO for Development	Ministry of Foreign Affairs	Authority	Compliance with standards	Refuse reapplication	Annual
The Netherlands	Association/ foundation	Local court	Authority		Internal control Dissolution	Not regular
	CBF accredited entities	Centraal Bureau Fondsenwerving	Private organisation	Responsible fundraising	Refuse reapplication of Seal	Five years
Portugal	Private law association/ foundation	Civil court	Authority	Financial report	Dissolution	Not regular
	Entity for public utility	President of the Council of Ministers	Authority	Annual report Accounts Additional info	-	Not regular
	NGO for Development	Ministry of Foreign Affairs	Authority	Compliance with standards	Revoke registration	Two years
Spain	Association for public utility	Local administrative authority	Authority	Activity report Accounts Auditing	Deprive the status	Annual
	Foundation	"Protectorados"	Authority	Action plan Accounts Auditing Special rules of small and large entities	Internal control Note to the court for dissolution	Annual
	NGO for Development	Agencia Española de Cooperación Internacional	Authority		Revoke registration	
Sweden	Association					
	Foundation	Local court	Authority	Compliance with statutes and law	Internal control	Not regular
	SIDA accredited entities	Styrelsen för Internationellt Utvecklingssamarbete	Authority	Project report Financial report Auditing	Internal control	Not regular
	SFI accredited entities	Stiftelsen för Insamlingskontroll	Private organisation	Accounts	Deprive account number	Not regular

Country	Type of Entity		Monitoring Body	Formation	Monitoring Standards	Extent of Power	Frequency
United Kingdom	Association/ foundation		Companies House	Authority	Annual return Accounts		Annual
	Friendly Society		Registration Authority	Authority	Annual report Accounts		Annual
	Charity	E/W	Charity Commission	Authority	Annual report Accounts Special rules for larger entities	Deprive status	Annual
		S	Office of the Scottish Charity Regulator	Authority	Have to be established	Internal control Notice to the court	Annual
		NI	No monitoring	-	-	-	-

5. Taxation

5.1. Tax system

The tax authorities often have set up schemes to register non-profit organisations in order to control their fulfilment of the requirements for tax exemptions and other concessions.

It is difficult to draw a clear distinction between a registration system and a tax system. Both are based on the idea that organisations that meet certain requirements get registered in order to achieve a special status. Furthermore, a favourable tax status can be considered as a form of accreditation, as the organisations normally have to be approved by an authority to receive a favourable treatment. Nevertheless these similarities, the tax system should be treated as a separate system because it is not exactly neither a regulation system nor an accreditations system but contains parts of both.

It had to be taken into consideration that a taxation system is very complex and specific, it cannot be generalised under the same terms as regulation or accreditation system. Besides, a taxation system only controls the entities in relation to the favourable tax treatment but does not relate to the whole entity.

The examination of the taxation in the national laws differs between the different types of tax.

5.2. Country information

5.2.1. Austria

(a) General rules

The general rule in Austria states that all organisations are taxable.

Three types of organisations that receive tax incentives: those that pursue directly and exclusively

- Public benefit
- Beneficial purposes
- Religious purposes

in accordance with Art. 34 – 47 "Bundesabgabenordnung" (BAO), the Federal General Fiscal Code.

Public benefit purposes are defined as those that support the general public on a mental, cultural, and moral or material field. A large number of persons must benefit from the organisation, Art. 35 BAO. Beneficial purposes are those that support persons requiring assistance, even a small group of people, Art. 36 BAO. The advancement of one of these purposes is exclusively if the organisations is mainly acting for the purpose and is not profit-making. The organisation has to have statutes describing the purpose and the activities to be conducted.

(b) Income Tax

Organisations that stick to the criteria of Art. 34 – 47 BAO are subject to income tax on their purpose-related commercial income and withholding tax. An organisation with primarily commercial activity is not eligible for tax benefits.

(c) Gift and inheritance Tax

All donations are subject to tax according to the Gift and Inheritance Tax Act ("Erbschafts- und Schenkungsteuergesetz"). Donations of cash and other movable property to public benefit, beneficial or religious purpose foundations are exempt from this tax. Donations to charitable, beneficial or religious purpose organisations are taxed at a flat rate of 2.5% according to Art. 8.3 a Gift and Inheritance Tax Act.

Any capital gains made through the sale of shares in a resident company are not taxed. Once the organisation gives grants to the beneficiaries, a capital income tax of 25% will be levied.

(d) VAT

There is no special regulation for public benefit organisations as regards VAT.

5.2.2. Belgium

(a) General rules

Public utility organisations can receive tax incentives in different taxes.

(b) Income Tax

According to Art. 181 Income Tax Code exemptions from Incorporated Income Tax is granted to associations for public utility and other organisations that work for public utility and one of the following purposes:

- the study or the protection and development of the professional interests of its members as exclusive or main purpose
- the maintaining of the legal persons working for purposes seen under aa)

- entities that are charged to collect, centralize, capitalize or distribute the funds assigned to the authorised advantages according to the social law

- the positioning or the maintaining of the educational system as exclusive or main purpose

- the organisation of fairs or exhibitions as exclusive or main purpose to provide assistance to families and older people, if the organisations has been approved by the competent authorities of the Communities

An activity is not regarded as for making profit if it is only conducted exceptionally, related to the procurement of the collected funds or secondary work.

Still, all profit making activities are taxed under the incorporated income tax.

All legal entities that are working for public benefit and are exempted of the Incorporated Income Tax are taxable to the legal entity income tax, pursuant to Art. 220 Income Tax Code.

(c) Real estate, capital investment, inheritance and gift Tax

The income of organisations for public utility deriving from real estate, capital investment and personal property is taxed with a final withholding tax. Net rental income from immovable property is taxed at a rate of 20% by assessment unless it is used for non-profit purposes.

The progressive rates of inheritance tax are reduced to 6.6% if the legacy is made to a foundation for public utility. Legacies made to non-profit associations are taxed at the reduced rate of 8.8%.

Gifts made in writing, in particular immovable property are subject to gift tax but also at the above mentioned reduced rates. 'Hand to hand' donations ('dons manuels') e.g. in cash or of movable property are not subject to the gift tax[253].

(d) VAT

The organisations for public benefit have to pay VAT. Some exemptions can be granted according to the law[254].

[253] EFC, country profile Belgium, p. 3, 4.

[254] EFC, country profile Belgium, p. 4.

5.2.3. Denmark

(a) General rules

Special rules apply for charitable purposes of entities. A purpose is considered charitable if a wide range and number of persons can benefit from the public benefit purpose.

Besides this, associations and foundations are treated differently under the tax law. Foundations can receive tax deductions in different ways, e.g. they can deduct the amounts they spend on their public benefit purpose activities according to Art. 4 FBL. They can also deduct other grants when their recipient is taxed. Donations from a foundation to another are also tax deductible. The local tax authority is the competent body that can grant tax exemptions to the foundation from the tax on the initial and later endowments or gifts. The Inland Revenue Department can also grant exemption from inheritance tax. There is no specific amount that needs to be distributed annually[255].

(b) Income Tax

(i) Associations

In general, associations do not pay income tax or tax on the property. But commercial activities are taxed according to Art. 1.1.6 of the Corporate Taxation Act "lov om indkomstbeskatning af aktieselskaber"; if the return of the commercial activity is spent on charitable purposes (e.g. scientific research, humanitarian assistance), it remains tax exempt[256].

(ii) Foundations

Foundations are treated as joint stock companies according to Art. 3. 1 "Fondbeskatningsloven" (FBL), Taxation Act for Foundations. They are taxed on the income derived from economic activities[257].

Other income is also taxed at a rate of 32%, but only when it exceeds ca. 34,000 Euro (DDK 250,000). Gifts and donations, which the foundation receives, are regarded as other income according to Art. 3.3 FBL (tax deductions for the foundations are possible). Gifts and donations given to the foundation in order to build up the endowment are not taxed (Art. 3.3 FBL). According to Art. 5 FBL a foundation may only consolidate the endowment up to the equivalent amount of 25% of the income spent on the public benefit purpose.

[255] EFC, Country profile Denmark, p. 4.

[256] Alfandari/Nardone, p. 91, n. 5000.

[257] Hansen in Hopt/Reuter, Denmark, p. 297.

Commercial income is taxed according to the Corporate Taxation Act "Lov om indkomstbeskatning af aktieselskaber". Foundations that are not subject to the FBL can be taxed according to the Corporate Income Tax Law "Selskabsskatteloven"[258].

(c) Inheritance Tax

In general, foundations are subject to inheritance tax up to 36.25%.

(d) VAT

Associations and foundations generally have to pay VAT at a rate of 25 %. In case the activities related to the VAT do not exceed DDK 10,000 (ca. 1,400 Euro), the associations and foundations are VAT exempt.

Furthermore, associations working for the following purposes are VAT exempt:

Medical service, public assistance, cultural or artistic activities, certain sport activities, education systems[259].

5.2.4. Finland

(a) General rules

The legal form of the entity does not automatically lead to tax exemption. In order to benefit from tax relieves the entities have to meet the criteria of a non-profit organisation.

Recognition of exempt status requires ongoing non-profit activities and is conferred by the tax authorities.

(b) Income Tax

Under the Income Tax Act personal income of an exempt organisation is generally not subject to taxation, except the income from unrelated commercial activities.

(c) Property Tax, Real Estate Tax

Tax exempt organisations are not subject to national property tax, but they have to pay a municipal real estate tax on income derived from real property.

(d) VAT

For the VAT, the entities are treated like final consumers. Therefore, they must pay the value added tax when purchasing goods and services. Certain activities are not subject to VAT at all (hospital and medical care; social welfare services; educational, financial and insurance services; lotteries and money games; transactions concerning bank notes and coins used as legal tender; real property including building land; certain transactions carried out by blind persons; and interpretation services for deaf persons) or they are subject to a reduced VAT rate, but these provisions are not based on the nature of the entity that is selling the goods or services but on the activity[260].

5.2.5. France

(a) General rules

In general, the tax treatment depends on the public utility purpose of an entity, Art. 795

General Tax Code. A favourable tax regime applies as soon as the public utility organisation is established. No special application is needed to receive tax exemption.

Economic activities of public utility entity that are directly linked to the purpose of the entity are usually exempt from corporate income tax. Unrelated commercial activity is regularly taxed at the normal corporate income tax rate. The distinction between non-profit character and profit-making activity is not always very clear.

According to the fiscal guidelines introduced in 1998 and 1999 "Instructions du 15 septembre 1998 - Bulletin Officiel des Impôts 4 H-5-98 et 16 février 1999 - Bulletin Officiel des Impôts OI 4 H-1-99" tax exemption from standard rates is granted if the organisation's management does not have a financial interest in the organisation, the organisation does not compete with the private sector, and activities are not conducted in the same way as commercial corporations.

(b) Income Tax

Income derived from non-profit activities is not taxed. Income in the form of return on investments, rents and farming is taxed at a reduced rate of 24% corporate income tax (some dividend income at a rate of 10%) with a tax-free allowance of 50,000 euros according to Articles 206-5 and 215 Income Tax Act "Code general des impost".

(c) Inheritance, Gift Tax and others

Public interest entities whose resources are exclusively spent on public benefit purposes are exempt from inheritance and gift tax. Special

[258] EFC, Country profile Denmark, p. 3, 4.

[259] Alfandari/Nardone, p. 92, n. 5020-5040.

[260] http://192.49.234.69/en/laki/kaannokset/1993/en19931501.pdf, 10 November 2004.

donations like goods of historical value, books, and paintings are also exempt from this tax.

(d) VAT

Certain activities are exempted from VAT.

5.2.6. Germany

(a) General rules

The taxation system for non-profit organisations is based on the purpose of an organisation not on the form of the entity. Organisations that acquired the status "organisation with charitable, benevolent or churchly purposes" in accordance with §§ 51 ff Federal Fiscal Code with the local tax authority(see details under Chapter 3.2.2.6. (a) on page 110) can achieve tax incentives.

(b) Income Tax

Organisations are exempted from the corporate income tax as well as from the trade income tax if they are recognised as "organisation with charitable, benevolent or churchly purposes" in accordance with §§ 51 ff Federal Fiscal Code as long as the taxable transaction concerns the special purpose.

Any commercial action is not exempted even if the surplus of these actions is reinvested on the special purpose.

(c) Real Estate Tax, Inheritance Tax

The rules governing the exemption from real estate and inheritance tax are the same as the rules for income tax exemption.

(d) VAT

VAT on business income not related to the charitable purpose is charged at 16%. Related business income may be charged at a lower rate. Some activities are exempt from VAT. Organisations cannot recover VAT paid on goods or services purchased[261].

5.2.7. Greece

(a) General rules

In General, tax incentives in Greece depend on the non-profit character and not on the type of entity. The decision on the non-profit quality of an entity's purpose is taken by the tax authority in the region of its registered seat. Therefore it controls the statutes, the resources and the annual report and accounts of the last three years[262].

(b) Income Tax

According to Art. 4 § 5 Decree Law 3843/58 modified by Law 2065/92, non-profit legal entities (in the sense of Art. 61 Civil Code) that have the registered seat in Greece are widely exempted from Income Tax; only the income from rent and lease or shares and stocks are subject to Income Tax.

If the non-profit entity has a public benefit purpose it is also exempted from the tax on rent and lease or shares and stocks, Art. 6 C. Decree Law 3843/58 modified by Law 2065/92. A public benefit purpose is a purpose that is not restricted to the private interest of a person or group of persons; i.e. philanthropic, religious, social, artistic or educational purposes. The competent authority to decide on this matter is the local tax authority[263].

Non-profit entities with public benefit purpose are completely exempted from Income Tax.

Non-profit associations are subject to Income Tax but the tax should not be imposed on the means necessary to pursue the non-profit aim[264].

(c) Real Estate Tax

Every transfer of real estate is subject to the Real Estate Tax, Art. 1 § 1 Law 1587/1950. In general, there are no favourable tax rules for non-profit associations; only Art. 18 § 2 Law 423/1976 assures a reduced tax rate.

(d) Inheritance and gift tax

All non-profit entities that are established in Greece and work for the public benefit, i.e. in the field of religion, philanthropy, humanitarian, pedagogic, social or arts are exempted from inheritance and gift tax, Art. 25 § 1, Art. 43 Decree-Law 118/1973[265].

Foreign entities can receive the same tax incentives if their country of origin provides tax incentives for Greek entities working in the country of origin (principle of reciprocity)[266].

(e) VAT

[261] http://www2.stmf.bayern.de/imperia/md/content/stmf/broschueren/st_vereine.pdf, 15 November 2004.

[262] Alfandari/Nardone, p. 242, n. 5120.

[263] Alfandari/Nardone, p. 243, n. 5130.

[264] Sousi/Mayaud, p. 143, n. 55.

[265] Sousi/Mayaud, p. 142, n. 54; Leonidas N. Georgakopoulos in Hopt/Reuter, Greece, p. 362.

[266] Alfandari/Nardone, p. 250, n. 6315.

In general, the payment of VAT depends on the activity, not on the legal form of an entity. Public benefit associations only pay a reduced tax rate (4% instead of 18%). There is a special procedure for foundations to be exempted from VAT[267].

5.2.8. Ireland

(a) General rules

Entities that want to qualify for tax incentives have to conduct charitable activities.

(b) Income Tax

- Section 207 and 208 of the Taxes Consolidation Act 1997 grant exemptions from income tax to charitable entities.

Recognized charities are exempt from paying income tax on interest, annuities, dividends and shares, rents on property, profits from trade or land owned and occupied. Use of the income to meet the normal running expenses of a charity, including proper remuneration for its employees, is treated as an application for charitable purposes.

Tax exemption will only apply to funds, or the proportion of funds that are used exclusively for charitable purposes. If funds are to be accumulated for more than 2 years, the prior permission of the Revenue Commissioners must be obtained[268].

(c) Trading Income

Irish tax law provides for a "trading exemption" in respect of profits which charities derive from trading income.

The Revenue Commissioners define trading as "generally involving the sale of goods or services to customers with a view to generating a profit".

To qualify for a trading exemption:

- the relevant body must have a charitable exemption and
- the income derived from trading must be applied solely to the purposes of the charity;

and normally one of the following conditions must also be satisfied:

- the trade must be a primary purpose of the charity; or
- the work in connection with the trade must be carried on mainly by beneficiaries of the charity.

(d) Others

Separate from the Tax Code, charities may also qualify for Property Rates exemption under the Valuation Act 2001/13.

(e) VAT

There is no general exemption from Value Added Tax (VAT) for charities.

5.2.9. Italy

(a) General rules

ONLUS is an autonomous fiscal category for non-profit organisations. If organisations want to benefit from any facilitations set up in this law (especially concerning the taxation rules) they have to get registered with the ONLUS registration office "l'anagrafe unica delle ONLUS". This office is held by the Revenue Agency "Agenzia delle Entrate" of the Ministry of Finance. Due to their structure and aims, voluntary organisations, social co-operatives and non-governmental organisations (for development) are ONLUS by default and do not need to make any formal application.

Other non-profit organisations must not pursue the main purpose to carry out business activities to be subject to tax incentives, Art. 87 Income Tax Code.

(b) Income Tax

ONLUS pay Income Tax at a reduced rate.

Other non-profit organisations are subject to the corporate income tax "Imposta sul reddito delle persone guiridiche". The taxable income can derive from capital, real estate, and where applicable, business activities. Business income is calculated differently, and some tax deductions are allowed. Some non-profit entities active in the field of education, culture and welfare can benefit from a 50% reduction of the corporate income tax.

(c) Real Estate Tax

Non-profit organisations are subject to local tax on real estate.

(d) VAT

For ONLUS there is the possibility of facilitation concerning the VAT.

[267] EFC, Country profile Belgium, p. 3.

[268] http://www.usig.org/countryinfo/ireland.asp, 29 September 2005.

Other non-profit organisations do not enjoy any privileged status as regards VAT. Only VAT paid on goods and services acquired to be used for commercial activities may be recovered.

5.2.10. Luxembourg

(a) General rules

Tax incentives in Luxembourg depend on the activity and not on the type of entity.

(b) Income Tax

Non-profit associations, foundations and public utility associations have to pay income tax according to Art. 159 "Loi concernant l'impôt sur le revenue", Income Tax Law. But they are tax exempted as far as they conduct directly and exclusively charitable activities or those of public utility. They remain liable to the income tax as far as they carry out commercial or industrial activity (Art. 161 Income Tax Law).

By decision of the Government, taken the opinion of the Minister of Finance, certain activities of non-profit making activities are not regarded as commercial or industrial if the activity is conducted for its statutory purpose and the association does not seek to distribute material profit to its members[269].

(c) Real Estate Tax

In general all entities are subject to Real Estate Tax but real estates of charitable associations, religious orders and hospital property are exempt.[270]

(d) VAT

All entities that have a relevant and professional economic activity are subject to VAT without taking into account the aim and the result of the economic activity.

Entities that do not pursue professional activities do not pay VAT.

Foundations are exempt from the VAT unless they have permanent economic activities of significant financial value.

In specific cases, e.g. if the organisation is conducting a specific non-profit activity, it may be exempted from VAT even if there is economic activity.[271]

All entities with an annual business volume not exceeding FLUX 1 million (ca. 25,000 Euro) are not subject to the VAT.[272]

5.2.11. The Netherlands

(a) General rules

The tax rules depend on the purpose of an organisation not its legal form.

In the absence of commercial activities, entities are not obliged to send in yearly tax returns. Audits will only occur if there are strong indications of tax evasion (from other sources of information).

Entities that carry out business activities in competition with businesses are taxed for this income according to the Corporate Income Tax Act (CIT). Entities that are shareholders in companies have to pay Corporate Income Tax.

As of 1999, in addition to the actual costs, 7% of training expenses for its personnel can be deducted if the entity competes with other non-profit organisations.

(b) Income Tax

In general, 'public purpose' organisations are exempt from company tax if they do not conduct competitive commercial activities.[273] According to Art. 5.1 c) CIT organisations that are established to carry out almost entirely (at least 90%) the following activities of general public interest are exempt from income tax: curing and caring for the sick; providing accommodation for the elderly or invalid; assisting the disabled; or providing small credits to the poor. The exemption depends on the actual activities and the financing of the organisation. An entity that wishes to be classified as a non-profit organization must send its statutes as well as its annual accounts to the competent tax authorities. It maintains the conferred tax status as long as it sends its annual accounts and tax return and notifies the tax authorities of any statutes' modifications.

Furthermore, the Ministry of Finance can grant tax exemption to other entities, which pursue general interest aims when their income does not exceed a certain amount according to Art. 6 CIT. In this

[269] http://www.impotsdirects.public.lu/az/c/coll_impot_reven/index.html, 17 December 2004.

[270] Alfandari/Nardone, p. 320, n. 5250.

[271] Alfandari/Nardone, p. 316, n. 5010; p. 317, n. 5030f; EFC, country profile Luxembourg, p. 4.

[272] Alfandari/Nardone, p. 318, n. 5070.

[273] Burger/Dekker/Veldheer in Schlüter/Then/Walkenhorst, The Netherlands, p. 197; EFC, Country Profile Netherlands, p. 2 f; van der Ploeg in Hopt/Reuter, The Netherlands, p. 415.

case there is no requirement that the entity has to distribute a certain amount of its income for the general interest purpose. Once received, the tax exempt status applies until the statutes are changed.

An association or foundation that runs a business pays corporation tax on the profits[274].

(c) Gift and Inheritance Tax

Public purpose organisations enjoy tax reduction on gifts and inheritance tax.[275]

The gift and inheritance tax is reduced to 11% for donations to foundations that belong to the group of philanthropic institutions in Art. 24 section 4 of the Estate Duty Act. For the calculation, each gift is valued at fair market value at the moment of acquisition.

Inheritances up to 7.800 euros (year 2001) and gifts up to 3.900 euros in two years (year 2001) are exempt in the form of a tax free allowance.[276]

(d) VAT

All entities that supply goods or services as a business are subject to VAT.

Services by non-commercial entities are exempted according to Art. 11 VAT Act.[277]

5.2.12. Portugal

(a) General rules

According to Art. 10 Corporate Income Tax Code "Código do Imposto Sobre o rendimento das Pessoas Colectivas", public utility organisations with the main purposes in the area of science, culture, charity, assistance, benevolence, social solidarity or environmental protection can get the status as tax exempt entity. The exemption must be recognised, at the request of the entity, by the Finance Ministry, who, by dispatch published in the Official Gazette, will define its scope. Law demands the compliance of certain requisites to keep the exemption status:

- the entity must work effectively on this purpose (exclusively or mainly)
- must spend, in the following four financial years, 50 % of the net income in the fulfillment of its purpose
- do not have any interest of members in the economic activity

Otherwise this tax benefit will be withdrawn.[278]

(b) Income Tax

According to Art. 10 Corporate Income Tax Code, legal entities of public utility are exempt from corporate income tax.

(c) Real estate, inheritance and gift tax

Legal entities of public utility are exempt from property sale and purchase tax related to the acquisition of real estate used for the fulfillment of the purpose. They need not pay real estate tax regarding real estate directly used to perform the purpose. They are also exempt from inheritance and gift tax. Exemptions have to be recognised by the tax administration.[279]

(d) Others

Foundations and associations for public utility are exempt on the tax on radio and television; can profit of reduced prices for water and electricity; are exempted on the tax on the realisation on public amusements; Art. 10 Law 460/77.

(e) VAT

Associations and foundations are generally subject to VAT as far as they are conducting commercial activities. The "Código do Imposto sobre o valor acrescentado", the VAT Code gives some incentives for certain activities of public utility associations.[280]

5.2.13. Spain

(a) General rules

1) Income Tax/Others

Generally, all organisations are taxed according to Art. 133 – 135 Corporate Tax Act. They can apply for tax relieves according to the following rules:

There are certain tax relieves for NGOs for Development according to Art. 33 - 35 of the Law

[274] http://www.kvk.nl/artikel/artikel.asp?artikelID=16165, 8 March 2005.

[275] Burger/Dekker/Veldheer in Schlüter/Then/Walkenhorst, The Netherlands, p. 197.

[276] EFC, Country Profile Netherlands, p. 2 f; van der Ploeg in Hopt/Reuter, The Netherlands, p. 415.

[277] EFC, Country Profile Netherlands, p. 4.

[278] http://www.dgci.min-financas.pt/dgciappl/codigosdgci/c_irc_001-033.html 12 November 2004; Alfandari/Nardone, p. 378, n. 5115, 5125-5130.

[279] EFC, Country Profile Portugal, p. 3.

[280] Alfandari/Nardone, p. 377, n. 5010, 5040.

for the international cooperation for development if they are registered to the AECI.

Exemption from Income Tax for non-profit organisatons according to Art. 5 -14 Law on Patronage "Ley 30/1994 del 24 noviembre" for grants and donations received to collaborate in the purposes of the organisation as well as the returns of the properties and any activities related to the public benefit purpose.

Registered Spanish foundations of public benefit receive a privileged tax regime upon request as well as offices of foreign foundations, which are registered in Spain if they fulfill the requirements listed in the Tax Act.

According to Art. 3 of the Law on Patronage, registered foundations working in the areas of education, culture, science, sports, health care, environment, social economy etc. can receive tax exemption on their income tax, if they used at least 70% of their net income to pursue the general interest purpose of the foundation. The income must be used within a period of four years. They have to deliver an annual financial report and in addition have to give yearly accounts to the "Protectorado". Non-tax exempted unrelated economic activities must not exceed 40% of the total revenues of the foundation.

According to Art. 6 and 7 of the Law on Patronage, tax exemption on Corporate Income Tax is granted for:

- Income from activities to support the purpose of the foundation
- Capital increase derived from inheritances and gifts (donations) given for the support of the aim of the foundation (including movable and immovable property)
- Income from movable and immovable property (dividends, rents, capital gains)
- Public grants and contributions derived from corporations to achieve the aim of the foundation (sponsorship agreements are treated like donations)
- Income from qualifying economic activities related to the public benefit purpose such as services in the area of social welfare, science and research, culture, education, training, publishing and environment
- Income coming from ancillary unrelated economic activities. Economic activities will not be considered as complementary if their net income exceeds 20% of the total income of the foundation.
- According to Art. 7.12 minor economic activities, which do not exceed 20,000 euros.[281]

(b) Income Tax

See under Chapter 3.5.2.13. (a) on page 157.

(c) VAT

According to Art. 20 "Ley del Impuesto sobre el Valor Anadido del 37/1992, de 28 de diciembre", the VAT Act, the activities of an NPO that are related to the public benefit purpose are exempted from VAT.

Foundations are considered as final consumers unless they carry out economic activities. They do not have the opportunity to claim VAT back.[282]

5.2.14. Sweden

(a) General rules

The application of tax incentives to entities depends on the legal form of the concerned entity.

(b) Income Tax

(i) Associations for general benefit

According to Chapter 7 Income Tax Act, entities that are recognised as associations for general benefit have to pay income tax, real estate tax, inheritance tax and gift tax. Associations must fulfill four prerequisites in order to get exemption from taxation of the income except for the portion that comes from property or business activity:

- the organisation's purpose must serve the public good rather than the families or groups of private persons
- the activities have to be exclusively for this purpose
- membership in the organisation must be reasonable open to all who want to join
- the preponderant portion of the organiszation's income must be used for the stated public good purpose[283]

[281] EFC, country profile France, p. 4.

[282] EFC, country profile France, p. 4.

Business or property income can be exempt if the activity generating the income:

- is part of the promotion of the beneficial purpose
- is naturally connected to the beneficial purpose
- is traditional for that kind of non-paid work or
- comes from real estate owned by the beneficial association and used by the association for its purpose.[284]

(ii) Foundations

According to Chapter 7, §§ 3 - 6 Income Tax Act, a foundation must belong to one of two main groups for receiving tax incentives: it must me a charitable foundation or a foundation listed in the "Catalogue".

To be considered as charitable a foundation must comply with three prerequisites:

- its aim and purpose should be considered as a 'qualified' public good purpose recognised purposes are: health care, strengthening of the national defense, relief work among the needy, furthering child care and education, promoting scientific research and furthering cooperation between the Scandinavian countries
- about 80% of its income over a five-year-period should be spent on this purpose
- its main activity should be carried out along the aim or purpose stated

In the "Catalogue", there are 45 specifically mentioned organisations or institutions listed; they are subject to paying tax solely on income from real estate property and not from any other form of income.

In general, foundations are less favored regarding the range of activities for which they are granted tax exemption and are also held to stricter standards than general benefit associations.[285]

(c) Inheritance and Gift Tax

(i) Associations for general benefit

An association that is declared to be for the public good is exempt from tax on the gifts it receives.[286]

(ii) Foundations

Foundations of special public benefit – as defined by Art. 3 of the Inheritance and Gift Law "Lag om arvsskatt och gåvo skatt" (AGL) are exempt of gift and inheritance tax. Other foundations with religious, charitable, social, political, artistic, cultural, sports or similar objectives are free from gift but not inheritance tax, according to Art. 38 AGL. This also includes foundations whose main purpose is to support trade and industry in Sweden.[287]

(d) VAT

Foundations that conduct business activities pay VAT. Associations for general benefit are largely exempt from the VAT since they are not generally considered businesses.[288]

5.2.15. United Kingdom

(a) General rules

Tax exemption in the United Kingdom is based on the recognition as charitable purpose. Once an organisation has been registered as a charity by the Charity Commissioners, such registration will generally lead to its acceptance by the Inland Revenue's Financial Intermediaries and Claims Office (FICO) as tax exempt. It normally retains that status for tax purposes until such time as it ceases to exist, either in its original form or altogether[289].

(b) Income Tax

Organisations are exempt from tax on most forms of income provided it is spent for charitable purposes.

Charities are, according to Section 505, 506 Income and Corporation Taxes Act 1988, exempt from income tax, corporation tax and capital gains tax, and gifts to charities are free of inheritance tax.

Apart from the income tax associated with donations under the Gift Aid scheme, income tax deducted from certain other types of income attract repayment, for example bank interest,

[283] Lundström Tommy/ Wijkström Filip in JH Working Paper, Sweden, p. 17 f.

[284] JAI/D2/NSK(2004)8301, answer Sweden, question 14.

[285] Wijkström/Einarsson, p. 37 f.

[286] Lundström Tommy/ Wijkström Filip in JH Working Paper, Sweden, p. 18.

[287] EFC, country profile Sweden, p. 5

[288] Lundström Tommy/ Wijkström Filip in JH Working Paper, Sweden, p. 18.

[289] EFC, country profile England and Wales, p. 3.

government stocks, royalties and Estate income[290].

(c) VAT

Charities can get special VAT treatment in some circumstances but are generally considered as final consumers.

5.3. Summary

There are many different systems concerning the taxation of non-profit organisations. Some systems base the taxation on the activity of the non-profit organisations, others on the legal form or on the purpose of the relatively entity. The extent to which the organisation may benefit from a favourable taxation range from complete tax exemption in all areas of direct taxation over tax exemption on special direct taxes to tax incentives.

In some countries the tax authorities confer a special status to organisations that meet the criteria for tax exemption. This status is not to be mistaken for a legal form even if the tax authorities register the entities. Dependent on its embodiment, it is to be considered as a kind of accreditation system. It may be that the status is only accepted by the tax authority or it may that the status is general accepted by the legal system as a proof for the public benefit of an organisation; thus it has the same impact as any accreditation. Summing up it has to be stressed that the acknowledgment of non-profit organisations by the tax authorities creates a very flexible system due to the fact that in most countries it does not rely on the legal form of an entity but on the activity or purpose that any entity may pursue.

6. Gambling

6.1. Gambling sector system

A last important contact point of the non-profit sector is the gambling sector. It may not be obvious at a first glance but gambling and especially lotteries and non-profit sector are closely linked.

On the one hand non-profit organisations may be in charge to conduct the lotteries and be the coordinating entity. On the other hand non-profit organisations are one of the main beneficiaries of the distributed funds gained by lottery or gambling in general. In this context the gambling sector has to provide some kind of regulation concerning the fund-distributing criteria and rules. As an outcome not only information on funds transfer but also on the beneficiaries can be received.

With this scope, the gambling sector in the Member States has been examined as regard the fund distributing organisation itself and its organisation form as well as the criteria for beneficiaries, the amount of distributed funds, and the existence of monitoring and special taxation rules.

6.2. Country information

6.2.1. Austria

Fund distributing organisation:

In Austria the right to run the lottery is exclusively entitled to the State. The state gave concessions to run the games to the Austrian State Lotteries "Österreichischen Lotterien". The associates are the Casino Austria AG (34%), the P.S.K. Beteiligungsverwaltung Gesellschaft m.b.H. (34%), the Lotto-Toto Holding Gesellschaft m.b.H (26%) and the Österreichischer Rundfunk (6%)[291].

Criteria for beneficiaries:

The lotteries support projects in the area of health and social work, culture and arts, environment and nature protection, science and research, sport and economy.

The fund distribution is related to certain criteria as the pursuance of long term aims by the sponsored entities, the integration of the project in the company's communication, the level of public utility etc.

Amount of distributed funds:

The total revenue in the year 2003 was 1.349,6 Mio Euros. 37.8 Mio Euros were spent for funding of sport[292].

[290] JAI/D2/NSK(2004)8301, answer England and Wales, question 14; http://www.legislation.hmso.gov.uk/acts/acts1988/Ukpga_19880001_en_43.htm#mdiv503, 19 November 2004.

[291] http://www.lottery.co.at/gaming/CS_struktur_unternehmen?sessionID=2e0ecfef-1401-583d13e-1f14-e990e0ca643a, 30 May 2005.

[292] http://www.lottery.co.at/gaming/CS_DatenFakten_unternehmen?

Monitoring rules:

There is no information available on monitoring.

Tax rules:

There is no special tax rule for the lottery or the funds of the lottery.

6.2.2. Belgium

Fund distributing organisation:

The National Lottery was formerly a semi-public organisation; it has been changed to a limited company under public law. The daily running of the National Lottery is carried out by the Management Committee. The role of the Grants Department is to distribute the National Lottery's profit intended for public utility purposes, determined by Royal Decree[293].

Criteria for beneficiaries:

The fund distribution is regulated as follows:

Amounts Reserved For Federal-Level Subsidies:

- Share reserved for matters directly referred to by the Act: the National Lottery traditionally supports development co-operation, via allocations to the Directorate-General of Development Co-Operation and the Belgian Survival Fund; it also finances the National Calamity Fund and the King Baudouin Foundation;

- Share reserved for public utility purposes: subsidies shall be granted for initiatives for family, welfare, humane, patriotic, scientific, cultural, economic, intellectual and sporting matters;

- Share reserved for so-called "specific" cases, for example in the Belgian Olympic and Interfederal Committee, for the preparation of our athletes for the Olympic Games;

- Share reserved for "Special Contributions", for Child Focus, for example

Amounts Reserved For Federal Entity-Level Subsidies:

Further to the Lambermont Agreements and under the terms of Clause 41 of the special Act of 13 July 2001 conveying the refinancing of the Communities and the extension of fiscal competences of the regions (Belgian Gazette of 03 August 2001), 27.44% of the overall annual amount of the National Lottery subsidies shall, with effect from its 2002 financial year, be directly transferred to the three Communities (Flemish, French-speaking and German-speaking), which shall then decide, with complete independence, the use that shall be made of their respective funding.

Amount of distributed funds:

The Belgian Survival Fund (BSF) was created with the objective of improving the food security of the most vulnerable population groups in the poorest countries. The law of 1983 allocated the BSF a budget of € 247.9 million (10 billion Belgian francs), the surplus of which (€ 48.7 million) was added on 1 January 1999 to the new allocation of € 250 million, granted to the 'Belgian Survival Fund – BSF' through the law of 1999. These resources originate from the net profits of the National Lottery, to be paid in annual instalments of minimum € 18.6 million[294].

Monitoring rules:

The Minister of Telecommunications, Public Enterprises and Participations performs its supervisory role on the National Lottery via a Government Commissioner, appointed by HRH the King on the recommendation of the aforementioned Minister. This Commissioner attends the meetings of the Board of Directors.

Tax rules:

There is no special tax rule for the lottery or the funds of the lottery.

6.2.3. Denmark

Fund distributing organisation:

sessionID=2e0ecfef-1401-583d13e-1f14-e990e0ca643a, 30 May 2005.

[293] http://www.loterie-nationale.be/pages/show.aspx?Culture=en&pageid=lln/who/profile&cache=d787505c, 15 June 2005.

[294] http://www.dgcd.be/en/actors/belgian_survival_fund/index.html, 2 February 2005.

Dansk Tipstjeneste (DT) is the Danish pools and lottery agency; the shareholders are the Danish State (80%), the Danish Sports Federation and the Danish Gymnastics and Sports Association (each 10%)[295].

Criteria for beneficiaries:

The DT profits are distributed according to rules laid down by the Danish Parliament for sporting, cultural and other non-profit purposes.

There are different standards to be met by the organisations for becoming funded, depending on the type of project and the amount of money.

Proposal for new regulation[296]:

The proposal for a unified Gaming Duties Act under the Ministry of Taxation aims to fulfil the traditional objective that gaming should not generate private financial profits of any great magnitude. The profit thus has to be distributed to charitable and public benefit activities and/or go to the Treasury in the form of duties:

The current duties and distribution schemes applicable to the state gaming agency Dansk Tipstjeneste Group should be maintained such that the Group pays a duty of 30% of the gross gaming revenue on all its games.

The public benefit lotteries "Varelotteriet" and "Landbrugslotteriet", the lotteries run by charitable organisations and the Danish state lottery "Klasselotteriet" should all be exempt from the duty provided that public control ensures that the whole profit is used for charitable and public benefit purposes.

In the case of games for which actual stake revenue cannot be calculated, i.e. promotional and free games, duty should be introduced on the prize sum.

Amount of distributed funds:

The profits distributed by Dansk Tipstjeneste Group in 2000 were approximately DKK 1.4 billion.

Monitoring rules:

With unification of the existing gaming legislation, the resources and responsibilities of the current Gaming Authority will have to be extended correspondingly. The Gaming Authority presently only controls the market for gaming machines. In future, the Gaming Authority will become the central authority for the whole of the gaming market, as well as the most important advisor and information organ for the government, parliament and the public.

The four main responsibilities of the Gaming Authority will be:

- regulation, control and supervision
- information, dialogue and advice
- monitoring of the internet
- international regulatory cooperation

In order to provide the Gaming Authority with an independent profile, the Gaming Authority should be established as an independent administrative unit under the Ministry of Taxation. This will ensure clear differentiation between the supervisory authority and the taxation authority, which would enhance acceptance of the authority. The operational costs should be financed through user charges. The frequency of monitoring has to be regulated in the future law.

Tax rules:

There is no special tax rule for the lottery or the funds of the lottery.

6.2.4. Finland

Fund distributing organisation:

"Raha-automaattiyhdistys" (RAY) is a private association with 99 member organisations that has the exclusive right in Finland to operate slot machines and run casinos.

Criteria for beneficiaries:

It gives funding assistance to NGOs which meet the applying requirements[297]:

[295] www.tips.dk, 10 March 2005.

[296] http://www.skat.dk/publikationer/udgivelser/1695/1913, 20 April 2005.

[297] http://www.ray.fi/inenglish/avustustoiminta/index.php, 9 November 2004.

- it has to be an incorporated non-profit organisation
- that is working on the health and welfare sector
- that has laid down organisation's rules
- and is compiling an annual report and financial statements as well as an action plan and budget

The NGOs accepted by RAY are allowed to use the logo "supported by RAY".

Amount of distributed funds:

There is no information available on the amount of distributed funds, but ca. 1000 organisations are funded by RAY.

Monitoring rules:

RAY monitors if the funding is used in a correct, appropriate and efficient way. Therefore the NGOs have to provide annual reports on the use of the funding. Besides, RAY visits the NGOs to perform audit work. The monitoring is performed annually.

Tax rules:

There is no special tax rule for the lottery or the funds of the lottery.

6.2.5. France

Fund distributing organisation:

"La Française des Jeux", holding the monopoly on the French gambling games, has been authorised by the State to run lottery and sports forecast games in the general interest and in observance of the ethical principles that must govern this activity. It has chosen to participate actively in the development of a corporate patronage.

Created in 1993, the "Fondation d'Entreprise La Française des Jeux" has taken on the challenge of sports patronage and plays the winning sport with confidence.

A board of directors defines the sponsorship policy held by the corporate foundation and controls its implementation. It is constituted by 9 members: 4 representatives of the founder, 3 personalities qualified in the sphere of intervention of the corporate foundation and 2 representatives of the founder's employees. Within the "commercial and communication" department of La "Française des Jeux", the patronage department proposes action projects, defines operation structures and looks after the day-to-day management of operations. Renewed for a fresh five-year period at the end of 2002, the corporate foundation has a five-year budget of 3,750,000 euro[298].

Criteria for beneficiaries:

For several years now, "La Française des Jeux" has had a privileged relationship with sport. Its substantial contribution to the financing of the "Fonds national pour le développement du sport", National Sports Development Fund, its presence in the sector of sports forecasting and the patronage of its cycling team testify to its involvement in sporting life.

Amount of distributed funds:

La "Française des Jeux" closed its financial year 2004 with a turnover of 8.5 billion euros.

Commissions of almost 560 million euros were paid to the distribution network and the overall contribution to public finances was in excess of 2.3 billion euros, 10% of which is allocated to the development of sport[299].

Monitoring rules:

There is no monitoring.

Tax rules:

La "Française des Jeux" paid annual taxation in the year 2000;[300] it can be concluded that there is no general tax exemption for the lottery but there is no further information available.

6.2.6. Germany

Fund distributing organisation:

[298] http://www.fdjeux.com/institutionnel_uk/fondation/option, 26 May 2005.

[299] http://www.fdjeux.com/generated/media/PRESSE/presse_pdf_14.pdf, 26 May 2005.

[300] Gambling on Culture, France, p. 27.

There is the national system of regional state lotteries whose profits are dedicated to special purposes. The lottery runs under the patronage of all federal states "Länder"; therefore there are 16 lottery companies. These co-operate nationally as regards the organisation of Lotto/Toto/Oddset and related offers, but not with regard to spending schemes of the surplus. The latter is only subject to the regional law making competence.

There are two 'class lottery' systems "Klassenlotterie" organised by private operators on behalf of the northern and southern "Länder". The semi public Lotto/Toto system in the federal states is jointly operated by a consortium of companies in the "Länder".

Casino licenses are also granted by the "Länder" authorities and may include earmarked contributions to public purposes.[301]

Criteria for beneficiaries:

In Bavaria the use of the lottery returns is no earmarked for specific purposes.

In general the lottery company pays a fixed amount to the national budget and the ministry decides on the appropriation.

Only for one game, "Glücksspirale", there is an earmarked use of return. 28.33 % of the funds are used for the advancement of health, sport, monument protection and nature conservation[302].

Amount of distributed funds:

There are estimated 450 million Euros of funds distributed in 2001.[303]

In Bavaria the total revenue in 2004 was 1.288 billion Euros. Out of this, ca. 20-30 % as profit returns and 17 % as tax are given to the Bavarian national budget.

Monitoring rules:

There is no special monitoring as regards the use of funds.

Tax rules:

In Bavaria the lottery has to pay 16.66 % lottery tax on the total revenue.

6.2.7. Greece

Fund distributing organisation:

The Football Pool Organisation (OPAP S.A.) was established in 1958 as a private legal entity while in 1999 was converted into a corporation (Societé anonyme). The Company's objective is the organisation, operation, and implementation of lottery games. More specifically, it organizes and operates the Greek football pools (PROPO) since 1958. Since 1990 OPAP organizes and manages LOTTO.

OPAP has a 20-year exclusive license to operate existing games in Greece. OPAP holds a 42 percent share of the Greek gaming market[304].

Criteria for beneficiaries:

OPAP S.A. sponsors athletic games, cultural and other events.

Amount of distributed funds:

Total annual turnover for 2004 was 3.067.915 thousand Euros[305]. Out of this amount, 6.299 thousand Euros were distributed to Greek Professional Football Association.

Monitoring rules:

The Company, since its foundation relished an absolute administrative and financial independence (Article 6 of L.D. 3865/1958), is subject to administration audits from the General Secretariat of Athletics, in addition to financial due diligence's from an ad hoc Committee comprised from senior financiers.

Tax rules:

The Income Tax for the lottery company is 35 %.

[301] Gambling on Culture, Germany, p. 27, 28.

[302] http://www.stmf.bayern.de/haushalt/staatshaushalt_2005/haushaltsplan/epl13.pdf, 6 June 2005.

[303] Gambling on Culture, Germany, p. 28.

[304] http://www.opap.gr/files/2004_ETHSIO_EN.pdf, p. 21, 23, 13 June 2005.

[305] http://www.opap.gr/files/2004_ETHSIO_EN.pdf, p. 26, 13 June 2005.

6.2.8. Ireland

Fund distributing organisation:

A Post National Lottery Company is licensed to operate the National Lottery by the Minister of Finance on the Minister's behalf in accordance with the National Lottery Act 1986.

The National Lottery Company commenced operations in March 1987 with the purpose of generating funds for the designated beneficiaries, while operating the National lottery in accordance with the highest standards of integrity, credibility and security[306].

In 1997 The Minister for Finance established the Charitable Lotteries Fund for the purposes of supplementing the income of the promoters of private charitable lotteries whose products were in direct competition with similar products available from the National Lottery. Support from the Fund is allocated by reference to the audited gross eligible sales of the relevant charitable lotteries[307].

Criteria for beneficiaries:

The National Lottery funds are allocated by the Government to the different funding areas:

- Fund for communal facilities in voluntary housing schemes:

  Must be Department approved non-profit making PLC to apply. Applicants should apply through local authority for once-off grants. Applicants should refer to memorandum HGS 6/92 available from the Department of the Environment & Local Government.

- The following schemes are funded from the National Lottery Beneficiary Fund through the Department of Education & Science:

  Fund for general expenses of adult education organisations

  Grants to colleges providing courses in Irish

  Publications in Irish

  Fund for general expenses of cultural, scientific and educational organisations

- Development of sport and recreational sports facilities

- Arts council grants under section 5(1)(A) of the National Lottery Act, 1986

- Department of health and children is a major beneficiary of National Lottery Funds and the following schemes receive allocations from the Fund:

  Grants to health agencies and other similar organisations

  Services for the elderly

  Services for the mentally handicapped

  Child care services

  Public health services

  Physical handicap services

  Health board services

  Health promotion

  Building, equipping and furnishing of health facilities

Amount of distributed funds:

In 2004, total sales were € 578.3 million, a 3.4% increase for the year.

€ 191.1 million (33% of total sales) was raised for beneficiary projects in 2004. This brings the total funds raised by the National Lottery since 1987 for distribution by the Government to good causes throughout Ireland to over € 2.2 billion[308].

Monitoring rules:

There is no information available on monitoring.

Tax rules:

Section 216 Tax Code

Exemption from income tax shall be granted in respect of profits from a lottery to which a license under Part IV of the Gaming and Lotteries Act, 1956, applies.

6.2.9. Italy

Fund distributing organisation:

[306] http://www.lotto.ie/media_room/about.asp, 22 June 2005.

[307] http://www.finance.gov.ie/viewdoc.asp?DocID=2650 &CatID=1&StartDate=01+January+2004&m, 22 June 2005.

[308] http://www.lotto.ie/media_room/about.asp, 22 June 2005.

The Italian state holds the monopoly of the lottery; the lottery is operated by the AAMS "Amministrazione Autonoma dei Monopoli di Stato", the government's agency competent for all State lottery and games. The AAMS directed the management to the "Consorzio Lotterie Nazionali", a co-operation between the Lottomatica, a stock exchange quoted private company and other companies (Scientific Games International Inc., Arianna 2001 S.p.A, Servizi Base 2001 S.p.A, Olivetti Tecnost S.p.A)[309].

Criteria for beneficiaries:

According to law 662/1996 lottery profits amounting to 155 million Euros annually are dedicated to the Ministry of the Heritage and Cultural Activities for the restoration and preservation of cultural, archaeological, artistic, archival and library goods. Besides, the Ministry of Economy decides on the spending of the lottery profits.[310]

Amount of distributed funds:

155 million Euros are dedicated to the Ministry of culture every year.

Monitoring rules:

There is no information available on monitoring.

Tax rules:

There is no information available for special tax rules.

6.2.10. Luxembourg

Fund distributing organisation:

The "Loterie Nationale" is run by the "Oeuvre Nationale de Secours Grande-Duchesse Charlotte" (ONS) by virtue of the Grand Ducal regulation of 13 July 1945. The ONS has legal and civil personality by virtue of the Grand Ducal regulation of 25 December 1944. It is run by a board of administrators of 20 members. The daily management of the "Loterie Nationale" is delegated to the director[311].

Criteria for beneficiaries:

Today by far the largest proportion of the Œuvre's receipts goes to other charities, as well as social and cultural philanthropies in Luxembourg. The net profits are distributed as follows:

- 30/72 to the Oeuvre Nationale de Secours Grande-Duchesse Charlotte
- 15/72 to the Oeuvres sociales des Communes
- 12/72 to the Fonds National de Solidarité
- 5/72 to the Croix Rouge (Red Cross)
- 5/72 to the Ligue Luxembourgeoise de Prévention et d'Action Médico-Sociales
- 5/72 to the Fondation Caritas

Amount of distributed funds:

Monitoring rules:

One of the principal characteristics of the Oeuvre is its role as director and regulator of lotteries in the Grand Duchy of Luxembourg, its advice and consent being required for the authorisation of any public lottery who's issued tickets will exceed a value of 100,000 francs.

Subsequently, the authorisations are delivered either by the college of mayors and municipal magistrates (value of tickets to be issued cannot exceed 250,000 francs), or by the Ministry of Justice (over 250,000 francs). The national charity's judgement in this respect has been exercised to the satisfaction of the public and the public authorities alike.

The charity's positive role was confirmed in the course of the drafting and publication of the law of 20 April 1977 concerning the exploitation of games of chance and betting on sporting events, and during the discussions and preparatory work for the law of 30 July 1983, which created a tax on the lotto.

[309] http://lotterienazionali.lottomatica.it/indexflash.htm, 14 June 2005.

[310] Gambling for Culture, Italy, p. 36, 38.

[311] http://www.loterie.lu/questions.html, 17 December 2004.

Tax rules:

All winnings are tax free.

6.2.11. The Netherlands

(a) National Lottery

Fund distributing organisation:

Lotteries are a special type of fundraising foundations. The major lotteries in the Netherlands are either set up by specific funds or transfer their net receipts to them.[312]

The largest lottery, the "Nationale Postcode Loterij" (NPL), gives around 50 % of its proceedings to organisations for development cooperation, human rights and environment[313].

Criteria for beneficiaries:

According to Art. 1.2. Rules governing the Lottery, the payments by the lottery have to support entirely aims of public interest situated in the field of development cooperation, human rights, nature resp. environment assistance, humanitarian assistance as well as social or cultural work or public health.

Amount of distributed funds:

There is no information available on the size of the sector.

Monitoring rules:

The government exercises the supervision on the NPL that the conducting of business is consistent with the license, Art.1.3. Rules governing the NPL.

Tax rules:

There is no special tax rule for the lottery or the funds of the lottery.

(b) Seal of approval by the "Centraal Bureau Fondsenwerving" (CBF)

Fund distributing organisation:

There is a special seal of approval for the gambling beneficiaries by the CBF.

Criteria for beneficiaries:

Foundations or associations that have full legal capacity and are established under Dutch law are eligible to request the seal for gambling beneficiaries. They have to pursue the realisation of a charitable, cultural, scientific or other purpose of public benefit at objectives of a gambling licensee (as defined in the law on gambling). It is not supposed to be a fundraising organisation; a gambling beneficiary who appeals to the general public for fundraising is considered as a fundraising organisation[314].

Eligibility criteria - the organisations need to:

- have an independent government board consisting of at least five members without narrow family or similar relations; its responsible for the financial directives, the policy and the daily control
- state a clear policy in a perennial action plan (for at least three years) containing measurable objectives and indicated priorities
- for all fund recruiting, information and communication measures the objectives, programs and financial situation of the entity have to be clearly defined. The total cost of the fundraising is not exceeding 25 % of the profits of it.
- the spending of resources has to be in accordance with the budget; resources which have been given a restricted objective have to be spend on this objective within three years.
- have a yearly press coverage informing on policy, communication, spending of the resources and the objectives.
- publish an annual account certified by an auditor; it has to be available free of charge for anyone interested in it.

Amount of distributed funds:

There is no information available on the size of the sector.

[312] Burger/Dekker/Veldheer in Schlüter/Then/Walkenhorst, The Netherlands, p. 197.

[313] http://www.npl.nl/web/show/id=40737/ category=43952/question=43953/sc=9a14be, 10 March 2005.

[314] www.cbf.nl/pages/criteria/Reglement%20CBF-Keur.pdf, 14 March 2005.

Monitoring rules:

The organisations are monitored annually.

Tax rules:

There is no special tax rule for the lottery or the funds of the lottery.

6.2.12. Portugal

Fund distributing organisation:

"Santa Casa da Misericórdia de Lisboa" (SCML) was established as a public service organisation by Decree-law nº 322 of 1991, which approved its Statutes currently in force. It is established under the Ministry of work and Social Solidarity. The essential goals of the institution consist generally in the pursuit of social services, health care, education, culture and promotion of people's quality of life. Special importance is equally given to housing patrimony and to the exclusive concession of charitable games nationwide.

SCML is ruled by a management body composed by the President "Provedor" and the Board of Directors "Mesa", with clear assignments defined by the Statutes. Besides, two other consultative boards exist, namely: The Institutional Council and the Games Council. The first makes proposals on questions pertaining to social work, health and promotion of people's quality of life. The latter enounces proposals regarding the concession of the charitable games[315].

Criteria for beneficiaries:

The State awarded the operation of social games to SCML to ensure their association with good causes. 'Social gambling' concerns all games involving money prizes that have been attributed by law to SCML, through its Gaming Department and whose profits, under the same law, go entirely towards social work carried out either by "Misericórdia de Lisboa" or by other state-funded non-profit making bodies and are used to provide support to health, social, cultural and sports projects.

The annual profits from the games are allocated to different organisations, particularly: the Volunteer Firefighters' Association, the AIDS Committee, the Cultural Fund, prevention and rehabilitation of the physically disabled, the Family and Child Support Project, projects supporting needy children, the development of football, the Directorate General of the Treasury, the Social Security Financial Management Institute and the Ministry of Labour and Social Security.

Amount of distributed funds:

There is no information available on the size of the sector.

Monitoring rules:

There is no information available on monitoring rules.

Tax rules:

Unlike other European countries, prizes are subject to taxation: 35% of the winnings in the Totoloto, Loto2 and Joker and 25% in the football pools – Totobola and Totogolo – and lotteries are withheld at source. This means that prizes are paid to betters net of tax.[316]

6.2.13. Spain

Fund distributing organisation:

The Spanish National Blind Organisation "Organizacion Nacional de Ciegos Españoles" (ONCE) is a public law corporation, an association with social goals, which was founded in 1940 to channel social services and all job-creation activities for Spain's blind and visually impaired. It holds the concession for the "cupón", a traditional lottery[317].

There is also the National Spanish State Lottery but no information could be found on the fund distribution[318].

Criteria for beneficiaries:

[315] http://www.scml.pt/default.asp?site=eng&sub=&id=1 &mnu=1, 27 June 2005.

[316] http://www.scml.pt/default.asp?site=eng&sub=&id=7 &mnu=7, 27 June 2005.

[317] http://www.once.es/vocacion/webenglish/fr20.htm, 27 May 2005.

[318] http://onlae.terra.es/indexp.htm, 27 May 2005.

ONCE finances its drive to cover the needs of Spain's blind and visually impaired citizens. The "cupón" also finances the ONCE Foundation and its programmes for insertion in the labour market and the elimination of barriers for people with disabilities other than blindness.

Amount of distributed funds:

More than 23,000 blind or disabled people sell the lottery "cupón", now the largest source of employment for Spain's blind. Of the revenue obtained from "cupón" sales, half is set aside for prize money, 25 per cent covers operating costs, 160 million euros are allocated to social services for the blind and, through the ONCE Foundation, some 80 million euros are devoted to solidarity with other groups of disabled.

Monitoring rules:

There is no information available for the monitoring of ONCE.

Tax rules:

There is no special tax rule for the lottery or the funds of the lottery.

6.2.14. Sweden

Fund distributing organisation:

The gambling and lottery market in Sweden is regulated. Only certain actors are allowed in the Swedish gambling and lottery market, such as public benefit organisations, the horse racing industry and the Swedish state. Commercial actors are excluded from the Swedish gambling and lottery market, with the exception of a certain level of entertainment gambling, i.e. gaming with low-value bets and low-value prizes. Such gambling may be carried out by private actors.

Permits to operate a casino can only be granted to a state-owned company[319].

Requirements for organisations to conduct lotteries according to the Lotteries Act:

- permit by the supervisory authority for a certain period of time and a certain area of conducting lottery

- they must assume that operations will be conducted in a manner appropriate from a general point of view and in accordance with directions, conditions and regulations issued.

- have to be Swedish legal entities

- have to be non-profit associations that

  have as their statutory principal purpose the promotion of objects that are of public benefit within the country

  conduct activities that principally satisfy such an object,

  do not refuse anyone to become a member, unless there are particular reasons for this with regard to the nature or extent of the association's activities or object or for any other reason, and

  need the income from lotteries for their activities.

- assume the following regulations:

  the value of the lottery prizes corresponds to at least 35 percent and not more than 50 percent of the value of the stakes,

  the prize share is stated on the lottery tickets, the subscription lists or at the location where the lottery is held, and

  it can be assumed that the lottery will give the applicant reasonable revenue and that this will be used for the relevant object of public benefit.

- If the organisations conducts lottery only in one municipality, it has to be registered

Permits may, if there are special reasons, also be granted to legal entities other than non-profit associations or legal entities with the principal aim of promoting objects that are for the public benefit outside the country.

Criteria for beneficiaries:

The profit from lotteries and gambling must be used for the public benefit.

[319] http://www.lotteriinsp.se/li_templates/Page____777.aspx, 2 December 2004.

Amount of distributed funds:

There is no information available on the size of the sector or the amount of distributed funds.

Monitoring rules:

According to Art. 48 ff Lotteries Act the National Gaming Board "Lotteriinspektionen" is charged with central monitoring of compliance with the Act and regulations issued pursuant to this Act. The National Gaming Board is also charged with more detailed supervision of lotteries arranged under permit from the Board or the government. The municipal licensing and supervisory authority and the country administrative board are charged with more detailed supervision of lotteries that are permitted to be arranged under the permit of or after registration with the authority. County administrative boards and municipalities shall assist the National Gaming Board in its exercise of central supervision.

The organisations have to submit accounts and any other required information to the supervisory authority.

The permit is granted for a certain period of time. As far as organisations that are obliged to register are concerned, they get the permit for 3 years.

Tax rules:

There was no information available on the tax rules.

6.2.15. United Kingdom

Fund distributing organisation:

The Community Fund is the operating name of the National Lottery Charities Board that distributes funds to charities and voluntary and community groups.

The Big Lottery Fund will bring together the work of two National Lottery distributors: the Community Fund, which provides funding for charities and the voluntary and community sectors, and the New Opportunities Fund, which provides funding for health, education and environment projects. It will also take over the Millennium Commission's role of supporting large-scale regeneration projects. In total, half of the funding that the Lottery rises for good causes - currently around £600million each year - will be distributed by the Big Lottery Fund. They are now consulting on the key priorities that should form part of our first set of funding programs. The Government has suggested a number of priorities it would like to see feature in these new programs, and these complement many of the views expressed during the Phase One consultation. The Big Lottery Fund wants suggestions from the public for other priorities that would help it to achieve it outcomes. The consultation ends on 7 January 2005[320].

Criteria for beneficiaries:

The Community Fund gives Lottery money to charities and voluntary and community groups.

It can only award grants to organisations that are eligible.

Only organisations that are established in the United Kingdom for charitable, philanthropic or benevolent purposes and that have set up a constitutional document can be eligible (Trust Deed or Memorandum and Articles of Association, etc)[321].

- Organisations that have been recognised as charities in law:

  Charities registered with the Charity Commission in England and Wales

  Charities recognised as such by the Inland Revenue in Scotland and Northern Ireland

  Exempt or excepted charities recognised as such by the Inland Revenue.

- Philanthropic or benevolent organisation:

  that is set up and run on similar lines to a charity;

  the majority of its objects (aims) or purposes are either charitable in law or close to being so;

  it does not permit anyone to make a profit from being associated with it;

  its purposes are not political or doctrinaire.

- Unlikely to be eligible are:

[320] http://www.biglotteryfund.org.uk/consultation, 23 November 2004.

[321] http://www.c-f.org.uk/funding-your-project/forms-and-guidance/guide-to-eligibility/guide-eligibility-english3.pdf, 22 November 2004.

Individuals;

Companies that exist to trade and make profits;

Health authorities and boards, as well as the services and hospitals they manage directly;

Local authorities, including the institutions and services they manage directly;

Local education authorities or education and library boards, including the institutions and services they manage directly;

Parish and community councils; and

Private schools or nurseries that do not have charitable status

Amount of distributed funds:

In the 2002-2003 financial year the Community Fund awarded £285 million.

Monitoring rules:

There was no information available on monitoring rules.

Tax rules:

There was no information available on the tax rules.

6.3. Summary and Table of Gambling sector system

The organisation of gambling and the distribution of funds are almost completely regulated. The organisational form of the fund distributing bodies may cover the whole range from public authorities to private organisations that are authorised by concession, licenses or other state authorisation. Furthermore almost all countries have regulation concerning the beneficiaries as concerns the type of supported projects and eligibility criteria. Even if there is not a comprehensive regulation for monitoring or special tax rules in all Member States, the gambling sector is subject to regulation in a considerably extent. The following table shall give an overview of the major characteristics.

Table 7. Gambling Sector System

Country	Fund distributing body	Formation	Beneficiaries	Criteria	Monitoring	Special tax rules
Austria	State Lotteries Österreichischen Lotterien	Company with state concessions	Public utility projects	Long term aims Integration of project in the company's communication Level of public utility		No
Belgium	National Lottery	Limited company under public law	Public utility purposes	Specific purposes specified in the Lottery Act	The Minister of Telecommunications, Public Enterprises and Participations supervises the National Lottery	No
Denmark	Danish pools and lottery agency, Dansk Tipstjeneste	State owned company	Charitable/ public benefit purposes	Rules laid down by the Danish Parliament	By the Gaming Authority	No
Finland	Raha-automaattiyhdistys	Private association	NGO	Non-profit Health and welfare sector Organisation's rules Accountability	By RAY; monitors correct, appropriate and efficient funding	No
France	La Française des Jeux	Corporate foundations, authorised by the state	Partners of privileged partnership	Development of sport	No	No
Germany	Regional state lotteries	State owned companies	No earmarked for specific purposes	Ministry decides on appropriation	No	Yes
Greece	Football Pool Organisation	Private corporation with state license	-	Athletic games, cultural and other events	The General Secretariat of Athletics monitors the organisation	Yes
Ireland	Post National Lottery	On behalf of the Ministry of Finance	-	Funding area must be recognised by the government	-	Yes
Italy	State lottery Amministrazione Autonoma dei Monopoli di Stato	Agency under the government	-	Ministry of Finance decides on appropriation	-	No
Luxembourg	State lottery Oeuvre Nationale de Secours Grande-Duchesse Charlotte	Legal person under Grand Ducal regulation	Charities, social or cultural philanthropies	-	The state lottery monitors all public lotteries	Yes
The Netherlands	National lottery agency, Nationale Postcode Loterij	Fundraising foundation with state license	Public interest purposes	Development cooperation, Human Rights, nature/ environment assistance, humanitarian assistance,	The government exercises the supervision on the NPL	No

Country	Fund distributing body	Formation	Beneficiaries	Criteria	Monitoring	Special tax rules
				social or cultural work or public health		
	Centraal Bureau Fondsenwerving	Private organisation	Entities with the special CBF Seal	Rules laid down by the CBF	CBF monitors the entities	No
Portugal	Santa Casa da Misericórdia de Lisboa	Public service organisation under the Ministry of Work	Non-profit social work purposes	Health, social, cultural and sports projects	-	Yes
Spain	Organizacion Nacional de Ciegos Españoles	Public law corporation with state concession	Blindness	Programmes for supporting blind persons	-	No
Sweden	Only public benefit organisations	Organisations with permit by the authority	Public benefit purposes	-	National Gaming Board supervises the lotteries and gaming organisations	-
United Kingdom	National Lottery Charities Board	Organisations with state license	Charitable purposes	Charity or voluntary/ community organisation with benevolent purposes	-	No

Chapter 4.
Research Recommendations

The recommendations presented in this Chapter are in line with those given in the report "Analysis of the EU10 Non-profit Sector for Monitoring and Control".

The following gives an overview of the main recommendations from the analysis of the non-profit sector in EU15.

In our opinion, the establishment of a single European system to monitor and control the non-profit sector seems to be the most important point in advancing the transparency and traceability of the non-profit sector.

1. Recommendation for Registration

The recommendation for registration of non-profit organisations is the creation of a single registration system which includes the obligation to register and the establishment of a common minimum requirement for accessing the register.

1.1. Single registration system

As far as the registration feature is concerned, it seems logical to recommend the creation of an EU-wide registration system with common requirements for the documents that need to be sent to the registration authority and the single register entries. Despite the simplicity of this statement, any decision on the implementation structure for such a registration system would be faced with some difficulties.

First of all, the types of entities covered by the registration have to be decided. As can be seen in the recommendations for Classification and Definition (see section 3.5 on page 121), there is the possibility to establish a unified definition for all entities forming part of the non-profit sector or for defining only specific types of entities at an EU level, maybe even restricted to those involved only in cross-border activity.

Secondly, two main possibilities for the embodiment of a registration system could be considered.

This could be either the establishment of an EU registration authority or a repository. A registration authority is understood as an authority that could be established under one of the organs of the European Union. It is meant to be completely independent from national registration authorities and having its own powers. Therefore it can be in charge not only of collecting the required register information and documents sent by the entities, but, it could also be responsible for the deposit of the documents to fulfil obligations of accountability and possibly also tax documentation.

The advantage of creating a registration authority is clearly that it would be a strong measure to regulate the sector not only in terms of registration but also along other dimensions. It would be the only contact point at the European level for any questions concerning the non-profit sector. This means that the authority could generate an almost complete picture of the non-profit sector summarising all relevant matters under one authority without having problems of information sharing or information gaps due to lack of collaboration. In addition to this, having one European authority responsible for the non-profit sector in all Member States would provide the same information on entities, independently of their country of origin. This would make it easier to find information, to understand the organisational structure and to compare entities coming from different Member States.

However, the creation of a registration authority interferes to a great extent with national competences. It needs to be clarified if the EU has the competence, especially with regard to the Principle of Subsidiary to establish an EU wide register for non-profit organisations. The answer to this question also depends on the type of organisation being addressed by the register. In case of entities with cross-border activities only, there should not be too many obstacles. If the registration is supposed to concern all types of activities, including also national activities, more careful analysis is necessary.

The repository on the other hand is meant only to be a location where information is stored without any power concerning either the collection of information or further power over the regulated entities. In this role as just an information pool, the repository can be a valuable source of information for all kinds of authorities searching

for detailed information on entities in the non-profit sector.

It is thereby not an obstacle that the repository does not have the power of a registration authority in asking for information. It is rather considered the responsibility of the relevant laws to ensure that the repository receives all information that is needed for ensuring transparency in the non-profit sector. It is easier to establish a repository rather than a registration authority due to the fact that it is only preserving information that has been collected by other authorities, in this case Member States. In this case no problems with the Principle of Subsidiary seem evident.

Thus it is not clear if there is an additional value added through the creation of a registration authority compared to a repository that can justify the greater interference with Member State competences.

As a third point, it has to be emphasised that registration should be obligatory for all entities active in the non-profit sector to achieve maximum transparency. As has been shown above (see 4.1.1 on page 124), the obligation to register an entity does not restrict the guarantee of freedom of association in a disproportionate way. Thus there is no legal obstacle for the general obligation to register non-profit organisations in a democratic system. Furthermore, the obligation should not be restricted to certain types of entities but comprise all types of entities to prevent loopholes in the control on the actors of the non-profit sector. The authors share the consideration by the UN Security Council Committee that states in its letter: "The monitoring team believes that it would help prevent the abuse of charities for terrorist purposes were they obliged in all states to register"[362]. Nevertheless one problem still persists: entities that do not want to acquire legal personality and therefore do not seek registration can be active without being noticed by any type of authority.

As a last point, the unitary registration requirements have to be considered. Summing up the existing national registration systems, some basic criteria for an EU registration system should be considered:

The minimum requirements of documents to be submitted to the registration authority should comprise:

- The act establishing the entity
- Its statutes
- Detailed data on the representatives as well as the board members
- Detailed information on the address of the entity

The register entry should include:

- Data on the entity including the name of the entity, complete postal address, date of establishment, duration of the entity, purpose and legal form
- Name of the competent authority
- Registration number
- Data on the representatives including name, date and place of birth, address and function/extent of power in the entity
- Authorisations and licenses that have been given to the entity
- Rules concerning the liquidation of the entity

The register should be publicly available.

1.2. Feasibility

The recommendations may appear very difficult to implement at an EU level. However, it needs to be stressed that these requirements should not be too difficult to achieve. It has already been seen that all Member States have some sort of registration system. The data and documents they currently require for registration compare at least in part with the requirements being suggested for the EU level registration system (for details see Table 3 on page 101). It would appear that an EU wide register could be easily achieved by modifying the types of registered entities and extending the requirements for data and documents for the recommended information above. This would lead to the creation of a repository that stores this information. The establishment of an EU registration authority could be derived from this as a second step.

2. Recommendations for Accreditation

The recommendation for accreditation is the establishment of an accreditation system. It has to be decided carefully if there is the need to implement an EU level accreditation system or if any other form, e.g. the enhancement of national accreditation systems would be sufficient.

2.1. Single accreditation system

Generally speaking, it has to be stressed, that the accreditation system approaches the non-profit sector from a closer point of view. Thus accreditation is to be considered as a hand-in-hand partnership because it is often established by organisations that themselves form part of the sector they want to regulate. It allows balancing the need for transparency and trust on the one hand with the freedom of operating of these entities on the other.

When compared with the legal status generally acquired by registration, i.e. legal personality, accreditation only grants a certified status that does not have the same acceptance. Additionally, accreditation may provide the entities with the basis for receiving subsidies from governments, institutions and private donors; a fact that registration may primarily only provide in specific cases e.g. the registration as a charity, but which may be a side effect of every registration. Thus, accreditation cannot substitute legal regulation in the form of a registration system. In particular, for operations that require legal personality, accreditation does not suffice.

Considering the different consequences of subscribing to a registration or accreditation system, the following is proposed.

In the absence of a registration system, there is the need to implement a unified accreditation system. The scope would be to promote trust and good governance in the non-profit sector, to avoid the misuse of loopholes in the legal system and to provide a label for effective donation of funds.

In the presence of a registration system, an accreditation system could be established to provide additional information on the non-profit sector and especially a label for effective donation of funds. The establishment of an accreditation system therefore can be seen as a two-step progression: to promote donor confidence and good governance in the non-profit sector an accreditation system is sufficient but to achieve comprehensive transparency and traceability for the non-profit sector, a registration system is needed.

Furthermore the concrete embodiment of the accreditation system has to be unified.

In case of the absence of an EU wide registration system, one should consider the establishment of an accreditation system at EU level to promote the minimum of good governance for the non-profit sector. In case of the presence of an EU registration system, one should consider the establishment of common rules to enhance the establishment of either an EU level or national level accreditation systems.

Special attention should be paid to the decision on the establishment of the accrediting body. This is because the form of the embodiment influences the acceptance of the certification in the legal system. In case the accrediting body is established under the auspices of an authority, the issued certificate is likely to be generally accepted. On the contrary, in case that the accrediting body is established as a private umbrella organisation, the acceptance of the certificate can be limited to the issuing body itself, to the part of the non-profit sector that is regulated by the accreditation or to a specific activity. In this context, the type of entities that are subject to accreditation should be carefully considered. There are different possibilities for deciding on this matter. The accreditation can be open to all entities forming the non-profit sector, but restricted to a certain type of entity (e.g. non-governmental organisations for development) or to a certain type of activity. Depending on the type of entity that receives the certificate and the extent of acceptance of the certification, the contribution of an accreditation system to the transparency in the non-profit sector would vary from the complete sector at EU level to certain types of activities in only one Member State.

To ensure maximum transparency it seems reasonable to recommend the establishment of a "Code of Conduct" as a basic regulation that has to be followed by all accrediting bodies in issuing the certificates and by all entities seeking accreditation for guaranteeing the uniformity of rules applied to the non-profit sector in terms of accreditation.

As a minimum, the accrediting body should check that the applicant entity fulfils certain minimum criteria which can be summarised as follows:

- only registered entities are entitled
- the non-profit making character of the activity is demonstrated
- the entity works for a specified purpose
- the entity can prove the capacity to implement the funded projects

Besides, it has to be stressed that accreditation can - contrary to registration - not be an obligatory system but, rather, be voluntary. Although this, on one hand creates less problems concerning the freedom of association of accredited entities, on the other, it makes the system less powerful than would be the case with obligatory registration.

2.2. Feasibility

The implementation of the recommendations on accreditation systems is not as complex as for the registration systems. This is due to the voluntary character and the minor impact in legal terms such as a legal status that is conferred by registration but not by accreditation. Therefore there are less conflict points with the competence of the Member States and the Principle of Subsidiary as well as with different national interests. As there are many different accreditation systems in the Member States with a different degree of acceptance with the public, as a first step, the establishment of a "Code of Conduct" would help unify the authenticity of the accrediting bodies and the guarantee vouched by the issued certificates. As a second step an EU level accrediting system should be introduced to make sure that there is at least the minimum guarantee of trust and good governance in the non-profit sector at the EU level.

3. Recommendations for Monitoring

Assuming the main findings of the assessment, the introduction of a single monitoring system that covers all types of entities is recommended, since monitoring seems to be the only way of controlling entities after their establishment.

3.1. Single monitoring system

The establishment of an effective single monitoring system needs to tackle two main points: the choice of the structure of the monitoring body and the establishment of useful monitoring criteria.

As far as the structure of the monitoring body is concerned, primarily the organisational structure has to be decided. Both governmental and private organisational forms are reasonable, but, as a mediator of trust, governmental agencies are preferable. This is confirmed by the fact that enabling a governmental authority with the task of monitoring creates a kind of centralised solution. It could have positive effects on trust as well as on flexibility to have one organisation in charge of both registration and monitoring of non-profit organisations. On the contrary, the advantage of assigning the monitoring system to the competence of a private organisation is the possibility of a closer relationship between the monitoring body and the monitored entity.

Private monitoring organisations are normally umbrella-organisations that themselves form part of the non-profit sector. For this reason they are more likely to be accepted by the monitored organisations; it could be regarded rather as a form of self-regulation than as monitoring by an authority. In case there is an accreditation system, the accrediting body could also conduct monitoring. This would allow the accrediting body to become a kind of reference point for all information concerning the accredited entities.

As a recommendation it has to be stated that it is not obvious which organisational structure for the monitoring body is to be preferred. It depends largely on the type of entity that has to be monitored and the system that is applied to the entities in terms of registration and/or accreditation. In any case, it seems reasonable to concentrate the registration/accreditation and monitoring within one body to guarantee greater transparency in the regulated sector. In addition, surrendering the monitoring to an authority would enable co-operation between different authorities for information sharing and cross checking of data on the entities.

As a second step the coverage of monitoring in terms of legal forms has to be decided. Based on the fact that monitoring is meant to enhance the transparency of the non-profit sector, ideally it should be extended to all legal forms of entities active in the non-profit sector.

Besides the structure of the monitoring body, the monitoring criteria also have to be decided.

Monitoring based on these criteria should give an overview of the activities of the entities during the monitored period and provide proof on the use of funds and grants.

The criteria should guarantee a minimum level of information concerning:

- financial reporting
- activity reporting
- management structure
- supervisory structure
- -communication structure, both internal and external
- advertising

Financial reporting should be based on accounting rules that include audit requirements. Special rules can be considered for large and for small entities.

The impact of monitoring is limited by the fact that only entities registered with the authorities or the accrediting bodies can be monitored.

3.2. Feasibility

The establishment of a single monitoring system may be very difficult if it is regarded as being independent of any other system.

The setting up of a monitoring system could be combined with the establishment of a single registration system. It would create a collective authority that is not only in charge of registering non-profit entities but also with their monitoring. The advantage would be that centralised information would be available from one single authority for every type of entity, both for registration and monitoring. This would allow maximum control and transparency in the non-profit sector. The disadvantage of this solution lies in the problems discussed above, with the competence of the EU especially as regards the Principle of Subsidiary. Therefore it should be considered as a step following the creation of a registration system.

As a minimum, common criteria for monitoring should be established that can then be applied by national oversight bodies. This is achievable without any major problems because the main focus of monitoring is on accountability. Most Member States already have accountability requirements for at least some types of entities. Moreover, for companies internationally agreed accounting standards already exist. By extending and slightly modifying national accounting rules to all entities in the non-profit sector, a comprehensive monitoring system could be established relatively easily.

4. Recommendations for Taxation

The main recommendation regarding taxation is fundamentally to regard tax authorities as a valuable source of information.

The fact that the taxation system relies in most countries not on the legal form of an entity, but, on the activity or its purpose, gives the possibility for a very broad outline of non-profit activity in a country. Thus to regard the tax authority as a valuable contact point for information concerning non-profit organisations activities is recommended. The extent of this outcome is limited by the fact that information can only be gathered if the authority is aware of the existence of these entities. The tax authorities should hold information not only on the tax status but also on the tax return of non-profit entities. This would give them the possibility of creating as complete a picture as possible of the relevant activities. In this context the tax authority should be linked with the registration authority to enable both to cross-check information on registered entities and also to complement the data available for ensuring maximum transparency. The creation of a repository with the registration authority on the tax status would make the information available at a centralised point.

As a second recommendation, advantage has to be taken of the willingness of organisations to collaborate with the tax authority. The readiness to collaborate with the tax authority is high because almost all Member States provide tax incentives for non-profit organisations. This is due to the fact that non-profit entities fulfil charitable, benevolent or public benefit activities that were originally assigned to the state. As a reward for fulfilling these, the entities are given favourable tax treatment for their related activities. For this reason it is easier for the tax authorities to have access to the non-profit sector as compared to any other authority.

Furthermore, the favourable tax system can provide an incentive for seeking certification. That means that the favourable taxation for non-profit organisation's activities or purposes can be seen as the motivation for the non-profit entities to be registered. The tax authorities could consequently be the link with the registration authorities if the acquisition of the favourable tax status were linked to the requirement of registration with the registration authority. In case of the absence of a registration system, the favourable tax status could be linked with the previous enrolling to an accreditation system.

5. Recommendations for Gambling

The gambling sector is linked with the NPO sector in terms of funding as most countries provide the NPO sector in general or specific parts of it e.g. organisations working in the cultural or sports fields with the profits from the gambling sector. It is in this context that the gambling sector can be a valuable source of information especially on money transfers and beneficiaries.

Furthermore the gambling sector gives an example on how to regulate the main actors comprehensively. All organisations that actively want to provide lottery or other gambling games, either need a license or some other form of state approval.

Chapter 5.
Conclusions

We would like to stress that there is an urgent need to regulate the non-profit sector. This need is not only due to the diversity of national systems and the lack of comparability at the EU-wide level but also due to the incompleteness of existing regulation.

The responsibility of the European Union in the international context as well as in relation to the Member States makes it so that the EU has to take all necessary actions to guarantee the implementation of appropriate regulations.

The establishment of a European body in charge of monitoring and control of the non-profit sector seems to be the most promising solution to regulate the sector and establish transparency.

It must be pointed out that the regulation of the non-profit sector is limited by two main factors:

On the one hand, attention has to be paid not to over-regulate the sector. The non-profit sector is based on voluntary work that may be unintentionally restricted by too many restrictions or by inappropriate regulations.

On the other hand, regulation and monitoring can only be successful if the non-profit organisations are recognised by the relevant authorities. However, there will always be a number of entities that are unregistered and can not be subject to any control mechanisms.

Starting from the current partially regulated status, the establishment of a European Code of Conduct for setting up common rules for accreditation and monitoring would be a good first step. Nevertheless, only through the establishment of a European registration system as a second step, can maximum transparency and traceability of funds be achieved.

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List of Contacted Persons

I would like to thank the following people and organisations that provided me with helpful information for the non-profit sector in their countries or for the non-profit sector in general.

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Annexes

Annex A.
Presentations

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Annex B.
National Legislation and Other Material Concerning National Law

4. Austria

4.1. Law on Associations

Bundesgesetz über Vereine (Vereinsgesetz 2002 – VerG)[322]

Verein

§ 1. (1) Ein Verein im Sinn dieses Bundesgesetzes ist ein freiwilliger, auf Dauer angelegter, auf Grund von Statuten organisierter Zusammenschluss mindestens zweier Personen zur Verfolgung eines bestimmten, gemeinsamen, ideellen Zwecks. Der Verein genießt Rechtspersönlichkeit (§ 2 Abs. 1).

(2) Ein Verein darf nicht auf Gewinn berechnet sein. Das Vereinsvermögen darf nur im Sinn des Vereinszwecks verwendet werden.

(3) Dieses Bundesgesetz gilt nicht für solche Zusammenschlüsse, die nach anderen gesetzlichen Vorschriften in anderer Rechtsform gebildet werden müssen oder auf Grund

freier Rechtsformwahl nach anderen gesetzlichen Vorschriften gebildet werden.

(4) Ein Zweigverein ist ein seinem Hauptverein statutarisch untergeordneter Verein, der die Ziele des übergeordneten Hauptvereins mitträgt. Eine Zweigstelle (Sektion) ist eine rechtlich unselbständige, aber weitgehend selbständig geführte, organisatorische Teileinheit eines Vereins.

(5) Ein Verband ist ein Verein, in dem sich in der Regel Vereine zur Verfolgung gemeinsamer Interessen zusammenschließen. Ein Dachverband ist ein Verein zur Verfolgung gemeinsamer Interessen von Verbänden.

Gründung des Vereins

§ 2. (1) Die Gründung eines Vereins umfasst seine Errichtung und seine Entstehung. Der

Verein wird durch die Vereinbarung von Statuten (Gründungsvereinbarung) errichtet. Er

entsteht als Rechtsperson mit Ablauf der Frist gemäß § 13 Abs. 1 oder mit früherer Erlassung eines Bescheids gemäß § 13 Abs. 2.

(2) Die ersten organschaftlichen Vertreter des errichteten Vereins können vor oder nach der Entstehung des Vereins bestellt werden. Erfolgt die Bestellung erst nach der Entstehung des Vereins, so vertreten die Gründer bis zur Bestellung der organschaftlichen Vertreter gemeinsam den entstandenen Verein.

(3) Hat ein Verein nicht innerhalb eines Jahres ab seiner Entstehung organschaftliche

Vertreter bestellt, so ist er von der Vereinsbehörde aufzulösen. Die Frist ist von der

Vereinsbehörde auf Antrag der Gründer zu verlängern, wenn diese glaubhaft machen, dass sie durch ein unvorhergesehenes oder unabwendbares Ereignis ohne ihr Verschulden

verhindert waren, die Frist einzuhalten.

(4) Für Handlungen im Namen des Vereins vor seiner Entstehung haften die Handelnden

persönlich zur ungeteilten Hand (Gesamtschuldner). Rechte und Pflichten, die im Namen

des Vereins vor seiner Entstehung von den Gründern oder von bereits bestellten organschaftlichen Vertretern begründet wurden, werden mit der Entstehung des Vereins für diesen wirksam, ohne dass es einer Genehmigung durch Vereinsorgane oder Gläubiger bedarf.

Statuten

[322] http://www.bmi.gv.at/downloadarea/kunsttexte/Vereinsgesetz2002.pdf 23 Feb. 2005.

§ 3. (1) Die Gestaltung der Vereinsorganisation steht den Gründern und den zur späteren

Beschlussfassung über Statutenänderungen berufenen Vereinsorganen im Rahmen der

Gesetze frei.

(2) Die Statuten müssen jedenfalls enthalten:

1. den Vereinsnamen,

2. den Vereinssitz,

3. eine klare und umfassende Umschreibung des Vereinszwecks,

4. die für die Verwirklichung des Zwecks vorgesehenen Tätigkeiten und die Art der

Aufbringung finanzieller Mittel,

5. Bestimmungen über den Erwerb und die Beendigung der Mitgliedschaft,

6. die Rechte und Pflichten der Vereinsmitglieder,

7. die Organe des Vereins und ihre Aufgaben, insbesondere eine klare und umfassende

Angabe, wer die Geschäfte des Vereins führt und wer den Verein nach außen vertritt,

8. die Art der Bestellung der Vereinsorgane und die Dauer ihrer Funktionsperiode,

9. die Erfordernisse für gültige Beschlussfassungen durch die Vereinsorgane,

10. die Art der Schlichtung von Streitigkeiten aus dem Vereinsverhältnis,

11. Bestimmungen über die freiwillige Auflösung des Vereins und die Verwertung des

Vereinsvermögens im Fall einer solchen Auflösung.

(3) Das Leitungsorgan eines Vereins ist verpflichtet, jedem Vereinsmitglied auf Verlangen die Statuten auszufolgen.

Name, Sitz

§ 4. (1) Der Name des Vereins muss einen Schluss auf den Vereinszweck zulassen und darf nicht irreführend sein. Verwechslungen mit anderen bestehenden Vereinen, Einrichtungen oder Rechtsformen müssen ausgeschlossen sein.

(2) Der Sitz des Vereins muss im Inland liegen. Als Sitz ist der Ort zu bestimmen, an dem der Verein seine tatsächliche Hauptverwaltung hat.

Organe, Prüfer

§ 5. (1) Die Statuten haben jedenfalls Organe zur gemeinsamen Willensbildung der

Vereinsmitglieder (Mitgliederversammlung) sowie zur Führung der Vereinsgeschäfte und zur Vertretung des Vereins nach außen (Leitungsorgan) vorzusehen.

(2) Die Mitgliederversammlung ist zumindest alle vier Jahre einzuberufen. Der gemeinsame Wille der Mitglieder kann auch im Rahmen eines Repräsentationsorgans

(Delegiertenversammlung) gebildet werden. Mindestens ein Zehntel der Mitglieder kann vom Leitungsorgan die Einberufung einer Mitgliederversammlung verlangen.

(3) Das Leitungsorgan muss aus mindestens zwei Personen bestehen. Zu seinen Mitgliedern dürfen nur natürliche Personen bestellt werden. Mit der Geschäftsführung und der Vertretung können auch mehrere beziehungsweise verschiedene Vereinsorgane betraut sein. Innerhalb eines Vereinsorgans können die Geschäfte und ertretungsaufgaben auch aufgeteilt werden.

(4) Sehen die Statuten ein Aufsichtsorgan vor, so muss dieses aus mindestens drei

natürlichen Personen bestehen. Seine Bestellung obliegt der Mitgliederversammlung. Die

Mitglieder eines Aufsichtsorgans müssen unabhängig und unbefangen sein. Sie dürfen

keinem Organ mit Ausnahme der Mitgliederversammlung angehören, dessen Tätigkeit

Gegenstand der Aufsicht ist. Sehen die Statuten eines Vereins, der zwei Jahre lang im

Durchschnitt mehr als dreihundert Arbeitnehmer hat, ein Aufsichtsorgan vor, so müssen ihm zu einem Drittel Arbeitnehmer angehören. Der jeweilige Durchschnitt bestimmt sich nach den Arbeitnehmerzahlen an den jeweiligen Monatsletzten innerhalb des vorangegangenen Rechnungsjahrs. Das Leitungsorgan hat jeweils zum Jahresletzten die Durchschnittsanzahl festzustellen und dem Aufsichtsorgan mitzuteilen. Im Übrigen sind die §§ 110 und 132 ArbVG sinngemäß anzuwenden.

(5) Jeder Verein hat mindestens zwei Rechnungsprüfer zu bestellen, ein großer Verein im

Sinn des § 22 Abs. 2 einen Abschlussprüfer. Rechnungsprüfer wie Abschlussprüfer müssen unabhängig und unbefangen sein, Abs. 4 vierter Satz gilt sinngemäß. Sofern die Statuten nicht anderes vorsehen, wird der Abschlussprüfer für ein Rechnungsjahr bestellt. Die Auswahl der Rechnungsprüfer und des Abschlussprüfers obliegt der Mitgliederversammlung. Ist eine Bestellung noch vor der nächsten Mitgliederversammlung notwendig, so hat das Aufsichtsorgan, fehlt ein solches, das Leitungsorgan den oder die Prüfer auszuwählen.

Geschäftsführung, Vertretung

§ 6. (1) Sehen die Statuten nicht anderes vor, so ist Gesamtgeschäftsführung anzunehmen. Hiefür genügt im Zweifel einfache Stimmenmehrheit.

(2) Sehen die Statuten nicht anderes vor, so ist auch Gesamtvertretung anzunehmen. Zur

passiven Vertretung des Vereins sind die Organwalter allein befugt.

(3) Die organschaftliche Vertretungsbefugnis ist, von der Frage der Gesamt- oder

Einzelvertretung abgesehen, Dritten gegenüber unbeschränkbar. In den Statuten

vorgesehene Beschränkungen wirken nur im Innenverhältnis.

(4) Im eigenen Namen oder für einen anderen geschlossene Geschäfte eines

organschaftlichen Vertreters mit dem Verein (Insichgeschäfte) bedürfen der Zustimmung

eines anderen, zur Vertretung oder Geschäftsführung befugten Organwalters.

Nichtigkeit und Anfechtbarkeit von Vereinsbeschlüssen

§ 7. Beschlüsse von Vereinsorganen sind nichtig, wenn dies Inhalt und Zweck eines

verletzten Gesetzes oder die guten Sitten gebieten. Andere gesetz- oder statutenwidrige

Beschlüsse bleiben gültig, sofern sie nicht binnen eines Jahres ab Beschlussfassung gerichtlich angefochten werden. Jedes von einem Vereinsbeschluss betroffene

Vereinsmitglied ist zur Anfechtung berechtigt.

Streitschlichtung

§ 8. (1) Die Statuten haben vorzusehen, dass Streitigkeiten aus dem Vereinsverhältnis vor

einer Schlichtungseinrichtung auszutragen sind. Sofern das Verfahren vor der

Schlichtungseinrichtung nicht früher beendet ist, steht für Rechtsstreitigkeiten nach Ablauf von sechs Monaten ab Anrufung der Schlichtungseinrichtung der ordentliche Rechtsweg offen. Die Anrufung des ordentlichen Gerichts kann nur insofern ausgeschlossen werden, als ein Schiedsgericht nach den §§ 577 ff ZPO eingerichtet wird.

(2) Die Statuten haben die Zusammensetzung und die Art der Bestellung der Mitglieder der Schlichtungseinrichtung unter Bedachtnahme auf deren Unbefangenheit zu regeln. Den Streitparteien ist beiderseitiges Gehör zu gewähren.

Vereinsbehörden, Verfahren

§ 9. (1) Vereinsbehörde im Sinn dieses Bundesgesetzes ist in erster Instanz die

Bezirksverwaltungsbehörde, im örtlichen Wirkungsbereich einer Bundespolizeidirektion

diese.

(2) Über Berufungen gegen Bescheide nach diesem Bundesgesetz entscheidet die

Sicherheitsdirektion in letzter Instanz.

(3) Die örtliche Zuständigkeit richtet sich, sofern nicht anderes bestimmt ist (§ 19 Abs.2),

nach dem in den Statuten angegebenen Vereinssitz.

Vereinsversammlungen

§ 10. Für Versammlungen, die von einem Verein abgehalten werden, gilt das

Versammlungsgesetz 1953, BGBl. Nr. 98/1953, mit der Maßgabe, dass die Mitglieder des Vereins als geladene Gäste gemäß § 2 Abs. 1 dieses Gesetzes anzusehen sind.

2. Abschnitt Entstehung des Vereins

Anzeige der Vereinserrichtung

§ 11. Die Errichtung eines Vereins (§ 2 Abs. 1) ist der Vereinsbehörde von den Gründern

oder den bereits bestellten organschaftlichen Vertretern unter Angabe ihres Namens, ihres Geburtsdatums, ihres Geburtsorts und ihrer für Zustellungen maßgeblichen Anschrift (§ 4 Zustellgesetz, BGBl. Nr. 200/1982) mit einem Exemplar der vereinbarten Statuten schriftlich anzuzeigen. Bereits bestellte organschaftliche Vertreter haben zudem ihre Funktion und den Zeitpunkt ihrer Bestellung anzugeben. Sofern bereits vorhanden, ist auch die für Zustellungen maßgebliche Anschrift des Vereins bekannt zu geben.

Erklärung, dass die Vereinsgründung nicht gestattet ist

§ 12. (1) Die Vereinsbehörde hat bei Vorliegen der Voraussetzungen des Art. 11 Abs. 2 der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten, BGBl. Nr. 210/1958, mit Bescheid zu erklären, dass die Gründung eines Vereins nicht gestattet wird, wenn der Verein nach seinem Zweck, seinem Namen oder seiner Organisation gesetzwidrig wäre.

(2) Eine Erklärung gemäß Abs. 1 muss ohne unnötigen Aufschub, spätestens aber binnen

vier Wochen nach Einlangen der Errichtungsanzeige bei der zuständigen Vereinsbehörde

schriftlich und unter Angabe der Gründe erfolgen.

(3) Ergibt eine erste Prüfung der vorgelegten Statuten Anhaltspunkte dafür, dass der Verein nach seinem Zweck, seinem Namen oder seiner Organisation gesetzwidrig sein könnte, so kann die Vereinsbehörde, wenn dies zur Prüfung dieser Fragen im Interesse eines ordnungsgemäßen Ermittlungsverfahrens notwendig ist, die in Abs. 2 angeführte Frist mit Bescheid auf längstens sechs Wochen verlängern.

(4) Ein Bescheid gemäß Abs. 3 muss ohne unnötigen Aufschub schriftlich und unter Angabe der Gründe erlassen werden. Gegen einen solchen Bescheid ist kein abgesondertes Rechtsmittel zulässig.

(5) Ein Bescheid gemäß Abs. 1 gilt hinsichtlich der in Abs. 2 angeführten und allenfalls

gemäß Abs. 3 verlängerten Frist auch dann als rechtzeitig erlassen, wenn seine Zustellung

innerhalb dieser Frist an der in der Errichtungsanzeige angegebenen Abgabestelle versucht worden ist.

Einladung zur Aufnahme der Vereinstätigkeit

§ 13. (1) Ergeht binnen vier, im Fall einer Verlängerung gemäß § 12 Abs. 3 binnen längstens sechs Wochen nach Einlangen der Errichtungsanzeige keine Erklärung gemäß § 12 Abs. 1, so gilt das Schweigen der Vereinsbehörde als Einladung zur Aufnahme der Vereinstätigkeit. Der mit Fristablauf entstandene Verein (§ 2 Abs. 1) kann seine Tätigkeit beginnen. Die Vereinsbehörde hat den Anzeigern eine unbeglaubigte Abschrift der Statuten und einen Auszug aus dem Vereinsregister zu übermitteln.

(2) Schon vor Fristablauf kann an die Anzeiger mit Bescheid eine ausdrückliche Einladung zur Aufnahme der Vereinstätigkeit ergehen, sobald die Vereinsbehörde zu einer Erklärung gemäß § 12 Abs. 1 keinen Anlass sieht. Der Einladung ist eine unbeglaubigte Abschrift der Statuten und ein Auszug aus dem Vereinsregister anzuschließen. Gegen einen solchen Bescheid ist kein Rechtsmittel zulässig.

Änderung der Statuten, der organschaftlichen Vertreter und der Vereinsanschrift

§ 14. (1) Die §§ 1 bis 13 gelten sinngemäß auch für Statutenänderungen. Ein

Vereinsregisterauszug ist nur dann zu übermitteln, wenn sich durch die Statutenänderung

der Registerstand geändert hat.

(2) Der Verein hat alle seine organschaftlichen Vertreter unter Angabe ihrer statutengemäßen Funktion, ihres Namens, ihres Geburtsdatums, ihres Geburtsorts und ihrer für Zustellungen maßgeblichen Anschrift sowie des Beginns ihrer Vertretungsbefugnis jeweils binnen vier Wochen nach ihrer Bestellung der Vereinsbehörde bekannt zu geben.

(3) Der Verein hat der Vereinsbehörde auch jede Änderung seiner für Zustellungen

maßgeblichen Anschrift binnen vier Wochen mitzuteilen.

3. Abschnitt Vereinsregister und Datenverwendung

Verwendung sensibler Daten

§ 15. Personenbezogene Daten gemäß § 16 Abs. 1 dürfen die Vereinsbehörden im Interesse der Offenlegung der für den Rechtsverkehr bedeutsamen Tatsachen sowie im Interesse der Ausschließlichkeit der Vereinsnamen (§ 4 Abs. 1) auch dann verwenden, wenn es sich im Hinblick auf den aus seinem Namen erschließbaren Zweck eines Vereins (§ 4 Abs. 1) um besonders schutzwürdige Daten im Sinne von § 4 Z 2 DSG 2000, BGBl. Nr. 165/1999, handelt.

Lokales Vereinsregister

§ 16. (1) Die Vereinsbehörden erster Instanz haben für die in ihrem örtlichen

Wirkungsbereich ansässigen Vereine folgende Vereinsdaten in einem Register evident zu

halten:

1. den Namen der örtlich zuständigen Vereinsbehörde erster Instanz;

2. den Namen des Vereins;

3. die ZVR-Zahl des Vereins gemäß § 18 Abs. 3;

4. das Datum des Entstehens des Vereins;

5. den Sitz und die für Zustellungen maßgebliche Anschrift des Vereins;

6. die statutenmäßige Regelung der Vertretung des Vereins;

7. die Funktion und den Namen der organschaftlichen Vertreter des Vereins, bis zu ihrer

ersten Bekanntgabe den Namen der die Errichtung des Vereins anzeigenden Gründer;

8. das Geburtsdatum, den Geburtsort und die für Zustellungen maßgebliche Anschrift

der organschaftlichen Vertreter des Vereins, bis zu ihrer ersten Bekanntgabe das Geburtsdatum, den Geburtsort und die für Zustellungen maßgebliche Anschrift der

die Errichtung des Vereins anzeigenden Gründer;

9. die für den Bereich des Vereinswesens erstellte verwaltungsbereichsspezifische

Personenkennzeichnung der organschaftlichen Vertreter des Vereins, bis zu ihrer

ersten Bekanntgabe die Personenkennzeichnung der die Errichtung des Vereins

anzeigenden Gründer;

10. den Beginn der Vertretungsbefugnis der organschaftlichen Vertreter des Vereins und

die statutenmäßige Dauer ihrer Funktionsperiode;

11. die Mitteilung des Abschlussprüfers im Sinn des § 22 Abs. 5 erster Satz;

12. die freiwillige Auflösung und die rechtskräftige behördliche Auflösung des Vereins;

13. die Abwicklung oder Nachabwicklung sowie den Namen des Abwicklers und den

Beginn seiner Vertretungsbefugnis;

14. das Geburtsdatum, den Geburtsort und die für Zustellungen maßgebliche Anschrift

des Abwicklers;

15. die für den Bereich des Vereinswesens erstellte verwaltungsbereichsspezifische

Personenkennzeichnung des Abwicklers;

16. die Beendigung der Abwicklung oder Nachabwicklung;

17. das Bestehen einer Auskunftssperre.

(2) Die Vereinsbehörde hat ihr bekannt gewordene Änderungen eingetragener Tatsachen

gemäß Abs. 1 im Register entsprechend ersichtlich zu machen, im Fall der Unzulässigkeit

hat sie die betreffende Eintragung zu löschen. Ersetzte oder gelöschte Eintragungen werden dadurch zu historischen Eintragungen. Mit der Eintragung einer Vereinsauflösung gemäß Abs. 1 Z 12, im Fall einer Abwicklung mit der Eintragung ihrer Beendigung gemäß Abs. 1 Z 16, endet die Rechtspersönlichkeit des Vereins (§ 27) und werden alle eingetragenen Tatsachen zu historischen Eintragungen. Historische Eintragungen sind zu kennzeichnen, sie müssen lesbar und abfragbar bleiben.

(3) Nach Ablauf von zehn Jahren ab dem Ende der Rechtsfähigkeit eines Vereins hat die

Vereinsbehörde alle im Vereinsregister verarbeiteten Daten endgültig zu löschen.

(4) Schreibfehler oder diesen gleichzuhaltende, offenbar auf einem Versehen oder offenbar ausschließlich auf technisch mangelhaftem Betrieb einer automationsunterstützten Datenverarbeitungsanlage beruhende Unrichtigkeiten einer Eintragung sind auf Antrag oder von Amts wegen zu berichtigen.

(5) Bei den Sicherheitsdirektionen geführte Evidenzen beziehungsweise Datenanwendungen dürfen solange weitergeführt werden, bis das Zentrale Vereinsregister seinen Betrieb aufnimmt. Die Sicherheitsdirektionen sind ermächtigt, bei Inkrafttreten dieses Bundesgesetzes verarbeitete Registerdaten im Sinn des Abs. 1 an die Vereinsbehörden erster Instanz – soweit technisch möglich und sinnvoll – zu übermitteln.

Die Vereinsbehörden erster Instanz sind ermächtigt, ihnen übermittelte Daten für Zwecke ihres Lokalen Vereinsregisters zu verwenden.

Erteilung von Auskünften

§ 17. (1) Das Lokale Vereinsregister ist insofern ein öffentliches Register im Sinn des § 17 Abs. 2 Z 2 DSG 2000, als die Vereinsbehörden erster Instanz auf Verlangen jedermann über die in § 16 Abs. 1 Z 1 bis 7, 10 bis 13 und 16 angeführten Daten eines nach seinem Namen oder seiner ZVR-Zahl (§ 18 Abs. 3) bestimmten Vereins (Einzelabfrage) Auskunft zu erteilen haben, soweit nicht auf Grund einer Auskunftssperre gegenüber Dritten gzmäß Abs. 6 vorzugehen ist.

(2) Auskunft über die in § 16 Abs. 1 Z 8 und 14 angeführten Daten sowie über historische

Daten (§ 16 Abs. 2) eines Vereins ist jedermann, soweit nicht auf Grund einer

Auskunftssperre gegenüber Dritten gemäß Abs. 6 vorzugehen ist, nur auf ausdrückliches

Verlangen und nur bei Glaubhaftmachung eines berechtigten Interesses, an Private überdies nur bei Nachweis ihrer Identität zu erteilen. Dem Verein selbst ist auf sein Verlangen jedenfalls Auskunft zu erteilen; die Bestimmungen des § 26 DSG 2000 und die Bestimmungen der §§ 17 und 17a AVG über die Akteneinsicht bleiben unberührt.

(3) Die Auskunft ergeht mündlich oder in Form eines Vereinsregisterauszugs. Scheint der gesuchte Verein im Vereinsregister nicht auf, so hat die Antwort zu lauten: „Es liegen über den gesuchten Verein keine Daten für eine Vereinsregisterauskunft vor".

(4) Jeder im Vereinsregister eingetragene Verein kann im Fall einer außergewöhnlichen

Gefährdung, insbesondere bei Vorliegen sensibler Daten (§ 15) bei der Vereinsbehörde

beantragen, dass Auskünfte über ihn nicht erteilt werden (Auskunftssperre). Dem Antrag ist stattzugeben, soweit ein schutzwürdiges Interesse glaubhaft gemacht wird. Die

Auskunftssperre kann für die Dauer von höchstens zwei Jahren verfügt oder verlängert

werden.

(5) Die Auskunftssperre ist zu widerrufen, sobald sich herausstellt, dass

1. sich der Antragsteller durch die Auskunftssperre rechtlichen Verpflichtungen entziehen will oder

2. der Grund für die Verfügung der Auskunftssperre weggefallen ist.

(6) Soweit eine Auskunftssperre besteht, hat die Antwort zu lauten: „Es liegen über den

gesuchten Verein keine Daten für eine Vereinsregisterauskunft vor." Eine Auskunft gemäß Abs. 1 oder 2 ist dennoch zu erteilen, wenn der Auskunftswerber eine rechtliche

Verpflichtung des Betroffenen geltend machen kann. In einem solchen Fall hat die

Vereinsbehörde vor Erteilung der Auskunft den Betroffenen zu verständigen und ihm

Gelegenheit zu einer Äußerung zu geben.

(7) Auskünfte aus Statuten sind durch Einsichtgewährung oder nach Maßgabe der

technisch-organisatorischen Möglichkeiten und gegen Kostenersatz durch Herstellung von Ablichtungen oder Ausdrucken zu erteilen.

(8) Wer eine Auskunft einholt darf darauf vertrauen, dass sie richtig ist, es sei denn, er kennt die Unrichtigkeit oder muss sie kennen. Liegt die Ursache einer unrichtigen Auskunft auf Seite des Vereins, so haftet bei Vorliegen der sonstigen Voraussetzungen ausschließlich der Verein für den entstandenen Vertrauensschaden.

(9) Auskünfte, die sich auf die Registerdaten aller oder mehrerer nach anderen

gemeinsamen Kriterien als ihrem Namen bestimmter Vereine beziehen (Sammelabfrage),

sind nicht zulässig. Sofern die Behörden das Register automationsunterstützt führen, darf

nicht vorgesehen werden, dass die Gesamtmenge der gespeicherten Daten nach anderen

gemeinsamen Auswahlkriterien als dem Vereinsnamen geordnet werden kann.

Insbesondere darf die Auswählbarkeit der Vereinsdaten aus der Gesamtmenge nach dem

Namen einer physischen Person nicht vorgesehen werden.

Zentrales Vereinsregister

§ 18. (1) Der Bundesminister für Inneres hat ein automationsunterstütztes Zentrales

Vereinsregister (ZVR) als Informationsverbundsystem im Sinn des § 4 Z 13 DSG 2000 zu führen, wobei der Bundesminister für Inneres sowohl die Funktion des Betreibers gemäß § 50 DSG 2000 als auch die eines Dienstleisters im Sinn des § 4 Z 5 DSG 2000 für diese Datenanwendung ausübt. Datenschutzrechtliche Auftraggeber des ZVR sind die Vereinsbehörden erster Instanz.

(2) Die Vereinsbehörden erster Instanz haben dem Bundesminister für Inneres für die

Zwecke des ZVR ihre Vereinsdaten gemäß § 16 Abs. 1 Z 1 bis 17 im Weg der

Datenfernübertragung zu überlassen; Näheres über die Vorgangsweise bei der Überlassung der Daten nach Halbsatz 1 und den Zeitpunkt, ab dem die jeweils zuständigen Behörden diese Überlassungen vorzunehmen haben, hat der Bundesminister für Inneres durch Verordnung festzulegen.

(3) Der Bundesminister für Inneres hat zur Sicherung der Unverwechselbarkeit der erfassten Vereine bei Führung des ZVR für die Vereinsbehörden jedem Verein eine fortlaufende Vereinsregisterzahl (ZVR-Zahl) beizugeben, die keine Informationen über den Betroffenen enthält. Die ZVR-Zahl ist der zuständigen Vereinsbehörde erster Instanz rückzumelden.

Verwendung der Daten des Zentralen Vereinsregisters

§ 19. (1) Der Bundesminister für Inneres hat die ihm für Zwecke des ZVR überlassenen

Vereinsdaten so zu verarbeiten, dass deren Auswählbarkeit aus der gesamten Menge nur

nach dem Vereinsnamen und der ZVR-Zahl der Vereine vorgesehen ist; § 17 Abs. 1 gilt für das ZVR sinngemäß.

(1a) Die Vereinsbehörden dürfen die im Zentralen Vereinsregister verarbeiteten Daten

gemeinsam benützen und Auskünfte daraus erteilen. Für die Erteilung von Auskünften gilt § 17 sinngemäß, wobei diese – abweichend von § 9 Abs. 3 – unabhängig vom Sitz eines Vereins von jeder Vereinsbehörde erster Instanz zu erteilen sind.

(2) Der Bundesminister für Inneres ist ermächtigt, Organen von Gebietskörperschaften auf Verlangen sowie Körperschaften öffentlichen Rechts auf deren Antrag eine Abfrage im Zentralen Vereinsregister in der Weise zu eröffnen, dass sie, soweit dies zur Besorgung einer gesetzlich übertragenen Aufgabe erforderlich ist, die dort verarbeiteten Daten - ausgenommen jene nach § 16 Abs. 1 Z 9 und 15 - bestimmter Vereine im Datenfernverkehr ermitteln können.

(3) Unbeschadet der Bestimmungen des Abs. 2 ist der Bundesminister für Inneres ermächtigt, jedermann die gebührenfreie Abfrage der im ZVR verarbeiteten Daten gemäß

§ 16 Abs. 1 Z 1 bis 7, 10 bis 13 und 16 eines nach seinem Namen oder seiner ZVR-Zahl

bestimmten Vereins, für den keine Auskunftssperre gemäß § 17 Abs. 4 besteht, im Weg des Datenfernverkehrs zu eröffnen (Online-Einzelabfrage).

(4) Der Zeitpunkt der Aufnahme des Echtbetriebs des Zentralen Vereinsregisters sowie

Näheres über die Vorgangsweise bei dem in Abs. 1 bis 3 vorgesehenen Verwenden von

Daten im Hinblick auf die für die jeweilige Datenverwendung notwendigen

Datensicherheitsmaßnahmen, sind vom Bundesminister für Inneres durch Verordnung

festzulegen, wobei für das Verwenden von Daten gemäß Abs. 1a und 2 insbesondere

vorzusehen ist, dass seitens des Empfängers sichergestellt wird, dass

1. in seinem Bereich ausdrücklich festgelegt wird, wer unter welchen Voraussetzungen eine Abfrage durchführen darf,

2. abfrageberechtigte Mitarbeiter über ihre nach Datenschutzvorschriften bestehenden

Pflichten belehrt werden,

3. entsprechende Regelungen über die Abfrageberechtigungen und den Schutz vor

Einsicht und Verwendung der Vereinsdaten durch Unbefugte getroffen werden,

4. durch technische oder programmgesteuerte Vorkehrungen Maßnahmen gegen unbefugte Abfragen ergriffen werden,

5. Aufzeichnungen geführt werden, damit tatsächlich durchgeführte

Verwendungsvorgänge im Hinblick auf ihre Zulässigkeit im notwendigen Ausmaß

nachvollzogen werden können,

6. Maßnahmen zum Schutz vor unberechtigtem Zutritt zu Räumlichkeiten, von denen

aus Abfragen durchgeführt werden können, ergriffen werden und

7. eine Dokumentation über die gemäß Z 1 bis 6 getroffenen Maßnahmen geführt wird.

(5) Eine auf Antrag eröffnete Abfrageberechtigung im Zentralen Vereinsregister ist vom

Bundesminister für Inneres zu unterbinden, wenn

1. die Voraussetzungen, unter denen die Abfrageberechtigung erteilt wurde, nicht mehr

vorliegen,

1a. die damit ermittelten Daten zu anderen Zwecken als zur Erfüllung eines gesetzlichen

Auftrages verwendet werden,

2. schutzwürdige Geheimhaltungsinteressen Betroffener von Auskünften verletzt wurden,

3. gegen Datensicherheitsmaßnahmen gemäß Abs. 4 Z 1 bis 7 verstoßen wurde oder

4. ausdrücklich auf sie verzichtet wird.

4. Abschnitt Vereinsgebarung

Informationspflicht

§ 20. Das Leitungsorgan ist verpflichtet, in der Mitgliederversammlung die Mitglieder über die Tätigkeit und die finanzielle Gebarung des Vereins zu informieren. Wenn mindestens ein Zehntel der Mitglieder dies unter Angabe von Gründen verlangt, hat das Leitungsorgan eine solche Information den betreffenden Mitgliedern auch sonst binnen vier Wochen zu geben.

Rechnungslegung

§ 21. (1) Das Leitungsorgan hat dafür zu sorgen, dass die Finanzlage des Vereins rechtzeitig und hinreichend erkennbar ist. Es hat ein den Anforderungen des Vereins entsprechendes Rechnungswesen einzurichten, insbesondere für die laufende Aufzeichnung der Einnahmen und Ausgaben zu sorgen. Zum Ende des Rechnungsjahrs hat das Leitungsorgan innerhalb von fünf Monaten eine Einnahmen- und Ausgabenrechnung samt Vermögensübersicht zu erstellen. Das Rechnungsjahr muss nicht mit dem Kalenderjahr übereinstimmen, es darf zwölf Monate nicht überschreiten.

(2) Die Rechnungsprüfer haben die Finanzgebarung des Vereins im Hinblick auf die

Ordnungsmäßigkeit der Rechnungslegung und die statutengemäße Verwendung der Mittel innerhalb von vier Monaten ab Erstellung der Einnahmen- und Ausgabenrechnung zu prüfen. Das Leitungsorgan hat den Rechnungsprüfern die erforderlichen Unterlagen vorzulegen und die erforderlichen Auskünfte zu erteilen.

(3) Der Prüfungsbericht hat die Ordnungsmäßigkeit der Rechnungslegung und die

statutengemäße Verwendung der Mittel zu bestätigen oder festgestellte Gebarungsmängel

oder Gefahren für den Bestand des Vereins aufzuzeigen. Auf ungewöhnliche Einnahmen

oder Ausgaben, vor allem auf Insichgeschäfte (§ 6 Abs. 4), ist besonders einzugehen.

(4) Die Rechnungsprüfer haben dem Leitungsorgan und einem allenfalls bestehenden

Aufsichtsorgan zu berichten. Die zuständigen Vereinsorgane haben die von den

Rechnungsprüfern aufgezeigten Gebarungsmängel zu beseitigen und Maßnahmen gegen

aufgezeigte Gefahren zu treffen. Das Leitungsorgan hat die Mitglieder über die geprüfte

Einnahmen- und Ausgabenrechnung zu informieren. Geschieht dies in der Mitgliederversammlung, sind die Rechnungsprüfer einzubinden.

(5) Stellen die Rechnungsprüfer fest, dass das Leitungsorgan beharrlich und auf

schwerwiegende Weise gegen die ihm obliegenden Rechnungslegungspflichten verstößt,

ohne dass zu erwarten ist, dass im Verein in absehbarer Zeit für wirksame Abhilfe gesorgt wird, so haben sie vom Leitungsorgan die Einberufung einer Mitgliederversammlung zu verlangen. Sie können auch selbst eine Mitgliederversammlung einberufen.

Qualifizierte Rechnungslegung für große Vereine

§ 22. (1) Das Leitungsorgan eines Vereins, dessen gewöhnliche Einnahmen oder

gewöhnliche Ausgaben in zwei aufeinander folgenden Rechnungsjahren jeweils höher als

eine Million Euro waren, hat ab dem folgenden Rechnungsjahr an Stelle der Einnahmen- und Ausgabenrechnung einen Jahresabschluss (Bilanz, Gewinn- und Verlustrechnung)

aufzustellen. § 21 und die §§ 189 bis 193 Abs. 1 und 193 Abs. 3 bis 216 HGB sind

sinngemäß anzuwenden. Die Verpflichtung zur Aufstellung eines Jahresabschlusses entfällt, sobald der Schwellenwert in zwei aufeinander folgenden Rechnungsjahren nicht mehr überschritten wird.

(2) Das Leitungsorgan eines Vereins, dessen gewöhnliche Einnahmen oder gewöhnliche

Ausgaben in zwei aufeinander folgenden Rechnungsjahren jeweils höher als 3 Millionen

Euro waren oder dessen jährliches Aufkommen an im Publikum gesammelten Spenden in

diesem Zeitraum jeweils den Betrag von einer Million Euro überstieg, hat einen erweiterten Jahresabschluss (Bilanz, Gewinn- und Verlustrechnung, Anhang) aufzustellen und überdies für die Abschlussprüfung durch einen Abschlussprüfer gemäß Abs. 4 zu sorgen. Dabei sind zusätzlich die §§ 222 bis 226 Abs. 1, 226 Abs. 3 bis 234, 236 bis 239, 242, 269 Abs. 1 und 272 bis 276 HGB sinngemäß anzuwenden. Im Anhang sind jedenfalls Mitgliedsbeiträge, öffentliche Subventionen, Spenden und sonstige Zuwendungen sowie Einkünfte aus wirtschaftlichen Tätigkeiten und die ihnen jeweils zugeordneten Aufwendungen auszuweisen. Der Abschlussprüfer übernimmt die Aufgaben der Rechnungsprüfer. Diese Verpflichtungen entfallen, sobald die im ersten Satz genannten Schwellenwerte in zwei aufeinander folgenden Rechnungsjahren nicht mehr überschritten werden.

(3) Wenn und soweit ein öffentlicher Subventionsgeber zu einer gleichwertigen Prüfung

verpflichtet ist, bleibt ein hievon erfasster Rechnungskreis von der Berechnung der

Schwellenwerte gemäß Abs. 1 und 2 und von der Prüfung durch den Abschlussprüfer oder durch die Rechnungsprüfer ausgenommen. Auf einen solchen Rechnungskreis sind die Rechnungslegungsbestimmungen entsprechend dem darin erreichten Schwellenwert

anzuwenden. Das Ergebnis der Prüfung durch den öffentlichen Subventionsgeber ist im Fall des Abs. 2 dem Abschlussprüfer, sonst den Rechnungsprüfern innerhalb von drei Monaten ab Aufstellung des Jahresabschlusses beziehungsweise ab Erstellung der Einnahmen- und Ausgabenrechnung mitzuteilen.

(4) Als Abschlussprüfer können Beeidete Wirtschaftsprüfer und Steuerberater oder

Wirtschaftsprüfungs- und Steuerberatungsgesellschaften, Beeidete Buchprüfer und

Steuerberater oder Buchprüfungs- und Steuerberatungsgesellschaften sowie Revisoren im

Sinn des § 13 Genossenschaftsrevisionsgesetz 1997, BGBl. I Nr. 127/1997, herangezogen

werden.

(5) Stellt der Abschlussprüfer bei seiner Prüfung Tatsachen fest, die erkennen lassen, dass

der Verein seine bestehenden Verpflichtungen nicht erfüllen kann, oder die erwarten lassen, dass der Verein in Zukunft zur Erfüllung seiner Verpflichtungen nicht in der Lage sein wird, so hat er dies der Vereinsbehörde mitzuteilen. Die Vereinsbehörde hat diesen Umstand im Vereinsregister ersichtlich zu machen. Die Eintragung ist wieder zu löschen, wenn der

Abschlussprüfer mitteilt, dass die ihr zu Grunde liegenden Tatsachen nicht mehr bestehen. Die Eintragung ist in einer Weise zu löschen, dass sie – abweichend von § 16 Abs. 2 – nicht weiter abfragbar ist.

5. Abschnitt Haftung

Haftung für Verbindlichkeiten des Vereins

§ 23. Für Verbindlichkeiten des Vereins haftet der Verein mit seinem Vermögen. Organwalter und Vereinsmitglieder haften persönlich nur dann, wenn sich dies aus anderen gesetzlichen Vorschriften oder auf Grund persönlicher rechtsgeschäftlicher Verpflichtung ergibt.

Haftung von Organwaltern und Rechnungsprüfern gegenüber dem Verein

§ 24. (1) Verletzt ein Mitglied eines Vereinsorgans unter Missachtung der Sorgfalt eines

ordentlichen und gewissenhaften Organwalters seine gesetzlichen oder statutarischen

Pflichten oder rechtmäßige Beschlüsse eines zuständigen Vereinsorgans, so haftet es dem

Verein für den daraus entstandenen Schaden nach den §§ 1293 ff ABGB; dies gilt

sinngemäß auch für Rechnungsprüfer. Bei der Beurteilung des Sorgfaltsmaßstabs ist eine

Unentgeltlichkeit der Tätigkeit zu berücksichtigen. Vereinsmitglieder sind in ihrer Eigenschaft als Teilnehmer der Mitgliederversammlung keine Organwalter.

(2) Organwalter können insbesondere schadenersatzpflichtig werden, wenn sie schuldhaft

1. Vereinsvermögen zweckwidrig verwendet,

2. Vereinsvorhaben ohne ausreichende finanzielle Sicherung in Angriff genommen,

3. ihre Verpflichtungen betreffend das Finanz- und Rechnungswesen des Vereins missachtet,

4. die Eröffnung des Konkursverfahrens über das Vereinsvermögen nicht rechtzeitig beantragt,

5. im Fall der Auflösung des Vereins dessen Abwicklung behindert oder vereitelt oder

6. ein Verhalten, das Schadenersatzpflichten des Vereins gegenüber Vereinsmitgliedern

oder Dritten ausgelöst hat, gesetzt haben.

(3) Die Ersatzpflicht tritt nicht ein, wenn die Handlung auf einem seinem Inhalt nach

gesetzmäßigen und ordnungsgemäß zustande gekommenen Beschluss eines zur

Entscheidung statutengemäß zuständigen Vereinsorgans beruht. Die Ersatzpflicht entfällt

jedoch nicht, wenn der Organwalter dieses Vereinsorgan irregeführt hat.

(4) Für Rechnungsprüfer gelten die Haftungshöchstgrenzen des § 275 Abs. 2 HGB

sinngemäß.

Geltendmachung von Ersatzansprüchen des Vereins

§ 25. (1) Zur Geltendmachung von Ersatzansprüchen des Vereins gegen einen Organwalter kann die Mitgliederversammlung einen Sondervertreter bestellen. Dazu kann die Mitgliederversammlung jedenfalls auch von einem allfälligen Aufsichtsorgan einberufen werden.

(2) Für den Fall, dass die Mitgliederversammlung die Bestellung eines Sondervertreters

ablehnt oder mit dieser Frage nicht befasst wird, können Ersatzansprüche von mindestens

einem Zehntel aller Mitglieder geltend gemacht werden. Diese bestellen für den Verein einen Sondervertreter, der mit der Geltendmachung der Ersatzansprüche betraut wird.

(3) Dringt im Fall des Abs. 2 der Verein mit den erhobenen Ansprüchen nicht oder nicht zur Gänze durch, so tragen die betreffenden Mitglieder die aus der Rechtsverfolgung

erwachsenden Kosten nach außen zur ungeteilten Hand (Gesamtschuldner) und im

Innenverhältnis, sofern nicht anderes vereinbart ist, zu gleichen Teilen.

Verzicht auf Ersatzansprüche durch den Verein

§ 26. Ein Verzicht auf oder ein Vergleich über Ersatzansprüche des Vereins gegen

Organwalter oder Prüfer ist Gläubigern des Vereins gegenüber unwirksam. Anderes gilt nur, wenn der Ersatzpflichtige zahlungsunfähig oder überschuldet ist und sich zur Abwendung oder Beseitigung des Konkurses mit seinen Gläubigern vergleicht.

6. Abschnitt Beendigung des Vereins

Ende der Rechtspersönlichkeit

§ 27. Die Rechtspersönlichkeit eines Vereins endet mit der Eintragung seiner Auflösung im Vereinsregister; ist eine Abwicklung erforderlich, verliert er seine Rechtsfähigkeit jedoch erst mit Eintragung ihrer Beendigung.

Freiwillige Auflösung

§ 28. (1) Die Statuten bestimmen, unter welchen Voraussetzungen sich ein Verein selbst

auflösen kann und was in diesem Fall mit dem Vereinsvermögen zu geschehen hat.

(2) Der Verein hat der Vereinsbehörde das Datum der freiwilligen Auflösung und, falls

Vermögen vorhanden ist, das Erfordernis der Abwicklung sowie den Namen, das

Geburtsdatum, den Geburtsort und die für Zustellungen maßgebliche Anschrift sowie den

Beginn der Vertretungsbefugnis eines allenfalls bestellten Abwicklers binnen vier Wochen nach der Auflösung mitzuteilen.

(3) Ist eine Abwicklung nicht erforderlich, so müssen die Eintragung der freiwilligen

Auflösung im Vereinsregister und die anderen, zu diesem Zeitpunkt aktuell gewesenen

Registerdaten – abweichend von § 17 Abs. 2 – noch ein Jahr nach Eintragung der

Auflösung allgemein abfragbar bleiben (§ 17 Abs. 1). Bis zur Betriebsaufnahme des

Zentralen Vereinsregisters ist die freiwillige Auflösung überdies vom Verein binnen vier

Wochen nach der Auflösung in einer für amtliche Verlautbarungen bestimmten Zeitung zu veröffentlichen.

Behördliche Auflösung

§ 29. (1) Jeder Verein kann unbeschadet des Falls nach § 2 Abs. 3 bei Vorliegen der

Voraussetzungen des Art. 11 Abs. 2 der Europäischen Konvention zum Schutze der

Menschenrechte und Grundfreiheiten, BGBl. Nr. 210/1958, mit Bescheid aufgelöst werden, wenn er gegen Strafgesetze verstößt, seinen statutenmäßigen Wirkungskreis überschreitet oder überhaupt den Bedingungen seines rechtlichen Bestands nicht mehr entspricht.

(2) Ist eine Abwicklung nicht erforderlich, so müssen die Eintragung der rechtskräftigen

behördlichen Auflösung im Vereinsregister und die anderen, zu diesem Zeitpunkt aktuell

gewesenen Registerdaten – abweichend von § 17 Abs. 2 – noch ein Jahr nach Eintragung

der Auflösung allgemein abfragbar bleiben (§ 17 Abs. 1). Bis zur Betriebsaufnahme des

Zentralen Vereinsregisters ist die behördliche Auflösung überdies von der Vereinsbehörde unverzüglich in einer für amtliche Verlautbarungen bestimmten Zeitung zu veröffentlichen.

(3) Bei Vorhandensein eines Vereinsvermögens hat die Vereinsbehörde die angemessenen gesetzmäßigen Vorkehrungen zu dessen Sicherung zu treffen.

(4) Schließlich hat die Vereinsbehörde bei Vorhandensein eines Vereinsvermögens dieses

abzuwickeln. Wenn dies aus Gründen möglichster Sparsamkeit, Raschheit, Einfachheit oder Zweckmäßigkeit, insbesondere im berechtigten Interesse Dritter, erforderlich ist, hat sie einen von ihr verschiedenen Abwickler zu bestellen.

Abwicklung, Nachabwicklung

§ 30. (1) Der aufgelöste Verein wird durch den Abwickler vertreten. In Erfüllung seiner

Aufgabe stehen ihm alle nach den Statuten des aufgelösten Vereins den Vereinsorganen

zukommenden Rechte zu. Ein von der Vereinsbehörde bestellter Abwickler ist dabei an ihm erteilte Weisungen gebunden.

(2) Der Abwickler hat das Vereinsvermögen zu verwalten und zu verwerten. Er hat die noch laufenden Geschäfte zu beenden, Forderungen des Vereins einzuziehen und Gläubiger des Vereins zu befriedigen. Das verbleibende Vermögen ist, soweit dies möglich und erlaubt ist, dem in den Statuten bestimmten Zweck oder verwandten Zwecken, sonst Zwecken der Sozialhilfe zuzuführen. An die Vereinsmitglieder darf im Fall der freiwilligen Auflösung eines Vereins verbleibendes Vermögen auf Grund einer entsprechenden Bestimmung in den Statuten soweit verteilt werden, als es den Wert der von den Mitgliedern geleisteten Einlagen nicht übersteigt.

(3) Ein von der Vereinsbehörde bestellter Abwickler hat auf sein Verlangen einen nach

Maßgabe des vorhandenen Vereinsvermögens vorrangig zu befriedigenden Anspruch auf

Ersatz seiner notwendigen Barauslagen und auf angemessene Vergütung seiner Tätigkeit.

(4) Die im Zug einer Abwicklung nach behördlicher Vereinsauflösung von der

Vereinsbehörde oder von einem von ihr bestellten Abwickler vorgenommenen

unentgeltlichen Vermögensübertragungen sind von den bundesrechtlich geregelten Abgaben befreit.

(5) Der Abwickler hat die Beendigung der Abwicklung der Vereinsbehörde unverzüglich

mitzuteilen. Die Funktion eines behördlich bestellten Abwicklers endet mit seiner Enthebung durch die Vereinsbehörde. Die Eintragung der Beendigung der Abwicklung im Vereinsregister und die anderen, zu diesem Zeitpunkt aktuell gewesenen Registerdaten müssen – abweichend von § 17 Abs. 2 – noch ein Jahr nach Eintragung der Auflösung allgemein abfragbar bleiben (§ 17 Abs. 1).

(6) Stellt sich nach Beendigung des Vereins (§ 27) heraus, dass (noch weitere)

Abwicklungsmaßnahmen erforderlich sind, so ist gemäß §§ 29 Abs. 3 und 4 sowie 30 Abs. 1 bis 5 vorzugehen. Für die Zeit der Nachabwicklung lebt der Verein vorübergehend wieder auf. Die entsprechenden Eintragungen im Vereinsregister sind vorzunehmen; für die Eintragung der Beendigung der Nachabwicklung gilt Abs. 5 letzter Satz sinngemäß.

7. Abschnitt Straf-, Übergangs- und Schlussbestimmungen

Strafbestimmung

§ 31. Wer

1. die Errichtung eines Vereins vor Aufnahme einer über die Vereinbarung von Statuten

und die allfällige Bestellung der ersten organschaftlichen Vertreter hinausgehenden

Vereinstätigkeit nicht gemäß § 11 Abs. 1 anzeigt oder

2. trotz Erklärung der Vereinsbehörde gemäß § 12 Abs. 1 eine Vereinstätigkeit ausübt

oder auf der Grundlage geänderter Statuten fortsetzt (§ 14 Abs. 1) oder

3. nach rechtskräftiger Auflösung des Vereins die Vereinstätigkeit fortsetzt oder

4. als zur Vertretung des Vereins berufener Organwalter

a. die Anzeige einer Statutenänderung unterlässt (§ 14 Abs. 1) oder

b. die organschaftlichen Vertreter des Vereins oder die Vereinsanschrift nicht

gemäß § 14 Abs. 2 und 3 bekannt gibt oder

c. die freiwillige Auflösung des Vereins nicht gemäß § 28 Abs. 2 anzeigt oder die

Veröffentlichung unterlässt (§ 28 Abs. 3) oder

d. die Mitteilung der Beendigung der Abwicklung nach freiwilliger Auflösung des

Vereins unterlässt (§ 30 Abs. 5 in Verbindung mit § 28 Abs. 2) oder

5. als Abwickler die Mitteilung der Beendigung der Abwicklung nach freiwilliger

Auflösung des Vereins unterlässt (§ 30 Abs. 5)

begeht – wenn die Tat nicht von den Strafgerichten zu verfolgen ist – eine

Verwaltungsübertretung und ist von der Bezirksverwaltungsbehörde, im Wirkungsbereich einer Bundespolizeidirektion von dieser, mit Geldstrafe bis zu 218 Euro, im Wiederholungsfall mit Geldstrafe bis zu 726 Euro zu bestrafen.

Verweisungen

§ 32. (1) Soweit in diesem Bundesgesetz auf Bestimmungen anderer Bundesgesetze

verwiesen wird, sind diese in ihrer jeweils geltenden Fassung anzuwenden.

(2) Soweit in anderen Bundesgesetzen und Verordnungen auf Bestimmungen verwiesen ist, die durch dieses Bundesgesetz geändert oder aufgehoben werden, erhält die Verweisung ihren Inhalt aus den entsprechenden Bestimmungen dieses Bundesgesetzes.

Inkrafttreten, Außerkrafttreten und Übergangsbestimmungen

§ 33. (1) Dieses Bundesgesetz tritt mit 1. Juli 2002 in Kraft, gleichzeitig tritt das

Vereinsgesetz 1951, BGBl. Nr. 233/1951, außer Kraft.

(2) Zum Zeitpunkt des Inkrafttretens dieses Bundesgesetzes anhängige Verfahren sind nach den Bestimmungen des Vereinsgesetzes 1951 zu Ende zu führen.

(3) Vereinsstatuten der zu diesem Zeitpunkt bestehenden Vereine sind – soweit erforderlich – bis spätestens 30. Juni 2006 an die Bestimmungen dieses Bundesgesetzes anzupassen.

(4) Die Bestimmungen über die Rechnungslegung (§ 21) und über die qualifizierte

Rechnungslegung für große Vereine (§ 22) sind erstmalig auf Rechnungsjahre anzuwenden, die nach dem 31. Dezember 2002 beginnen. Die Rechtsfolgen der Größenmerkmale gemäß § 22 Abs. 1 und 2 treten ein, wenn diese Merkmale an den beiden dem 1. Jänner 2005 vorangehenden Abschlussstichtagen zutreffen; hat ein Verein ein vom Kalenderjahr abweichendes Rechnungsjahr (§ 21 Abs. 1 letzter Satz), entsprechend später.

(5) § 19 in der Fassung des Artikels 6 des Bundesgesetzes BGBl. I Nr. 10/2004 tritt mit

1. März 2004 in Kraft. Die §§ 18 Abs. 3 und 31 Z 4 lit. e in der Fassung des Artikels 6 des Bundesgesetzes BGBl. I Nr. 10/2004 treten drei Monate nach dem durch Verordnung des Bundesministers für Inneres gemäß § 19 Abs. 4 festzulegenden Zeitpunkt der Aufnahme des Echtbetriebes des Zentralen Vereinsregisters in Kraft.

Vollziehung

§ 34. Mit der Vollziehung dieses Bundesgesetzes sind hinsichtlich §§ 9 und 10, § 14 Abs. 2 und 3, §§ 15 bis 17 Abs. 7, § 17 Abs. 9, §§ 18 und 19, § 29, § 30 Abs. 5, § 31 der

Bundesminister für Inneres, hinsichtlich § 2 Abs. 4, §§ 6 und 7, §§ 23 bis 26 der Bundesminister für Justiz, hinsichtlich § 30 Abs. 4 der Bundesminister für Inneres und der Bundesminister für Finanzen, hinsichtlich aller übrigen Bestimmungen der Bundesminister für Inneres und der Bundesminister für Justiz betraut.

4.2. Law on Foundations

4.2.1. Law on private foundations

"Privatstiftungsgesetz (PStG)" of 14 October 1993[323]

Begriff

§ 1. (1) Die Privatstiftung im Sinn dieses Bundesgesetzes ist ein Rechtsträger, dem vom Stifter ein Vermögen gewidmet ist, um durch dessen Nutzung, Verwaltung und

Verwertung der Erfüllung eines erlaubten, vom Stifter bestimmten Zwecks zu dienen; sie genießt Rechtspersönlichkeit und muß ihren Sitz im Inland haben.

(2) Eine Privatstiftung darf nicht

1. eine gewerbsmäßige Tätigkeit, die über eine bloßeNebentätigkeit hinausgeht, ausüben;

2. die Geschäftsführung einer Handelsgesellschaft übernehmen;

3. persönlich haftender Gesellschafter einer Personengesellschaft des Handelsrechts oder einer eingetragenen Erwerbsgesellschaft sein.

Name

§ 2. Der Name einer Privatstiftung hat sich von allen im Firmenbuch eingetragenen Privatstiftungen deutlich zu unterscheiden; er darf nicht irreführend sein und muß das

Wort „Privatstiftung" ohne Abkürzung enthalten.

[323] http://www.privatstiftung.info/Content.Node2/content/downloads/anhang-psg.pdf 23 February 2005.

Stifter, Zustiftung

§ 3. (1) Stifter einer Privatstiftung können eine oder mehrere natürliche oder juristische Personen sein. Eine Privatstiftung von Todes wegen kann nur einen Stifter haben.

(2) Hat eine Privatstiftung mehrere Stifter, so können die dem Stifter zustehenden oder vorbehaltenen Rechte nur von allen Stiftern gemeinsam ausgeübt werden, es sei denn, die Stiftungsurkunde sieht etwas anderes vor.

(3) Rechte des Stifters, die Privatstiftung zu gestalten, gehen nicht auf die Rechtsnachfolger über.

(4) Wer einer Privatstiftung nach ihrer Entstehung Vermögen widmet (Zustiftung), erlangt dadurch nicht die Stellung eines Stifters.

Stiftungsvermögen

§ 4. Der Privatstiftung muß ein Vermögen im Wert von mindestens 70 000 Euro gewidmet werden.

Begünstigter

§ 5. Begünstigter ist der in der Stiftungserklärung als solcher Bezeichnete. Ist der Begünstigte in der Stiftungserklärung nicht bezeichnet, so ist Begünstigter, wer von der vom Stifter dazu berufenen Stelle (§ 9 Abs.1 Z 3), sonst vom Stiftungsvorstand als solcher festgestellt worden ist.

Letztbegünstigter

§ 6. Letztbegünstigter ist derjenige, dem ein nach Abwicklung der Privatstiftung verbleibendes Vermögen zukommen soll.

Errichtung und Entstehung einer Privatstiftung

§ 7. (1) Die Privatstiftung wird durch eine Stiftungserklärung errichtet; sie entsteht mit der Eintragung in das Firmenbuch.

(2) Für Handlungen im Namen der Privatstiftung vor der Eintragung in das Firmenbuch haften die Handelnden zur ungeteilten Hand.

Privatstiftung von Todes wegen

§ 8. (1) Die Privatstiftung von Todes wegen wird durch letztwillige Stiftungserklärung errichtet.

(2) Liegt eine solche Stiftungserklärung vor, so ist der gegebenenfalls bestellte erste Stiftungsvorstand im Verlassenschaftsverfahren zu verständigen.

(3) Ist die Eintragung der Privatstiftung in das Firmenbuch nicht in angemessener Frist zu erwarten, so ist auf Antrag oder von Amts wegen vom Gericht ein Stiftungskurator zu bestellen; dieser hat

1. für das Entstehen der Privatstiftung Sorge zu tragen und erforderlichenfalls den ersten Stiftungsvorstand sowie den ersten Aufsichtsrat zu bestellen;

2. bis zur Bestellung des Stiftungsvorstands den Anspruch aus der Stiftungserklärung geltend zu machen und das gewidmete Vermögen zu verwalten.

(4) Der Stiftungskurator ist vom Gericht zu entheben, sobald die Privatstiftung entstanden oder wenn ihre Entstehung unmöglich ist.

(5) Der Stiftungskurator hat Anspruch auf Ersatz seiner Barauslagen und auf angemessene Entlohnung seiner Mühewaltung. Diese Beträge bestimmt das Gericht. Gegen die Bestimmung kann Rekurs ergriffen werden, gegen die Entscheidung des Gerichts zweiter Instanz ist der Rekurs ausgeschlossen. Der Anspruch besteht gegen

die Privatstiftung und, wenn diese nicht entstanden ist, gegen den Rechtsnachfolger des Stifters.

Stiftungserklärung

§ 9. (1) Die Stiftungserklärung hat jedenfalls zu enthalten:

1. die Widmung des Vermögens;

2. den Stiftungszweck;

3. die Bezeichnung des Begünstigten oder die Angabe einer Stelle, die den Begünstigten festzustellen hat; dies gilt nicht, soweit der Stiftungszweck auf Begünstigung der Allgemeinheit gerichtet ist;

4. den Namen und den Sitz der Privatstiftung;

5. den Namen sowie die für Zustellungen maßgebliche Anschrift des Stifters, bei natürlichen Personen das Geburtsdatum, bei Rechtsträgern, die im Firmenbuch eingetragen sind, die Firmenbuchnummer;

6. die Angabe, ob die Privatstiftung auf bestimmte oder unbestimmte Zeit errichtet wird.

(2) Die Stiftungserklärung kann darüber hinaus insbesondere enthalten:

1. Regelungen über die Bestellung, Abberufung, Funktionsdauer und Vertretungsbefugnis des Stiftungsvorstands;

2. Regelungen über die Bestellung, Abberufung und Funktionsdauer des Stiftungsprüfers;

3. Regelungen über die Bestimmung des Gründungsprüfers;

4. die Einrichtung eines Aufsichtsrats oder weiterer Organe zur Wahrung des Stiftungszwecks (§ 14 Abs. 2) und die Benennung von Personen, denen besondere

Aufgaben zu kommen;

5. im Fall der notwendigen oder sonst vorgesehenen Bestellung eines Aufsichtsrats Regelungen über dessen Bestellung, Abberufung und Funktionsdauer;

6. Regelungen über die Änderung der Stiftungserklärung;

7. die Angabe, daß eine Stiftungszusatzurkunde errichtet ist oder werden kann;

8. den Vorbehalt des Widerrufs der Privatstiftung (§ 34);

9. Regelungen über Vergütungen der Stiftungsorgane;

10. die nähere Bestimmung des Begünstigten oder weiterer Begünstigter;

11. die Festlegung eines Mindestvermögensstandes, der durch Zuwendungen an Begünstigte nicht geschmälert werden darf;

12. die Bestimmung eines Letztbegünstigten;

13. Regelungen über die innere Ordnung von kollegialen Stiftungsorganen;

14. die Widmung und Angabe eines weiteren, das Mindestvermögen (§ 4) übersteigenden Stiftungsvermögens.

Stiftungsurkunde, Stiftungszusatzurkunde

§ 10. (1) Die Stiftungserklärung ist zu beurkunden (Stiftungsurkunde, Stiftungszusatzurkunde).

(2) Enthält die Stiftungsurkunde die Angabe, daß eine Stiftungszusatzurkunde errichtet ist oder werden kann (§ 9 Abs. 2 Z 6), so können über § 9 Abs. 1 hinausgehende Regelungen, ausgenommen eine Regelung gemäß § 9 Abs. 2 Z 1 bis 8, in einer

Zusatzurkunde beurkundet werden. Die Stiftungszusatzurkunde ist dem Firmenbuchgericht nicht vorzulegen.

Gründungsprüfung

§ 11. (1) Wird das Mindestvermögen nicht in Geld inländischer Währung aufgebracht, so ist zu prüfen, ob das gewidmete Vermögen den Wert des Mindestvermögens erreicht.

(2) Der Gründungsprüfer ist vom Gericht zu bestellen. § 20 Abs. 2 und 3 gilt sinngemäß.

(3) Der Prüfungsbericht ist dem Stifter und dem Stiftungsvorstand vorzulegen. Über

Meinungsverschiedenheiten zwischen dem Gründungsprüfer und dem Stiftungsvorstand

entscheidet auf Antrag des Stiftungsvorstands oder des Gründungsprüfers das Gericht.

(4) Der Gründungsprüfer hat Anspruch auf Ersatz seiner Barauslagen und auf angemessene Entlohnung seiner Mühewaltung. Im übrigen ist § 27 Abs. 2 Aktiengesetz

1965 anzuwenden. Der Anspruch besteht gegen die Privatstiftung und, wenn diese nicht entstanden ist, gegen den Stifter.

Anmeldung zum Firmenbuch

§ 12. (1) Die Privatstiftung ist vom ersten Stiftungsvorstand zur Eintragung in das Firmenbuch anzumelden.

(2) Mit der Anmeldung zur Eintragung sind vorzulegen:

1. die Stiftungsurkunde in öffentlich beglaubigterAbschrift;

2. die öffentlich beglaubigte Erklärung sämtlicher Mitglieder des Stiftungsvorstands, daß sich das Stiftungsvermögen in ihrer freien Verfügung befindet;

3. hinsichtlich des gewidmeten Geldbetrages die Bestätigung eines Kreditinstitutes* mit Sitz im Inland oder der Österreichischen Postsparkasse, daß der Geldbetrag auf ein Konto der Privatstiftung oder des Stiftungsvorstands eingezahlt ist und zu dessen freien Verfügung steht;

4. der Prüfungsbericht des Gründungsprüfers, wenn das Mindestvermögen nicht in Geld inländischer Währung aufgebracht ist.

Eintragung in das Firmenbuch

§ 13. (1) Privatstiftungen sind in das Firmenbuch einzutragen.

(2) Örtlich zuständig ist jenes Gericht (§ 120 Abs. 1 Z 1 JN), in dessen Sprengel die Privatstiftung ihren Sitz hat.

(3) § 3 FBG ist sinngemäß anzuwenden. Darüber hinaus sind einzutragen:

1. kurze Angabe des Stiftungszwecks;

2. das Datum der Stiftungsurkunde und jede Änderung dieser Urkunde;

3. gegebenenfalls das Datum einer Stiftungszusatzurkunde sowie das Datum einer Änderung;

4. gegebenenfalls Name und Geburtsdatum des Vorsitzenden, seiner Stellvertreter und der übrigen Mitglieder des Aufsichtsrats.

(4) Der Tod eines Stifters nach Abgabe der Stiftungserklärung hindert die Eintragung nicht. In diesem Fall ist § 8 Abs. 3 bis 5 entsprechend anzuwenden.

Organe der Privatstiftung

§ 14. (1) Organe der Privatstiftung sind der Stiftungsvorstand, der Stiftungsprüfer und

gegebenenfalls der Aufsichtsrat.

(2) Die Stifter können weitere Organe zur Wahrung des Stiftungszwecks vorsehen.

Stiftungsvorstand

§ 15. (1) Der Stiftungsvorstand muss aus wenigstens drei Mitgliedern bestehen; zwei Mitglieder müssen ihren gewöhnlichen Aufenthalt in einem Mitgliedstaat der Europäischen Union oder in einem Vertragsstaat des Abkommens über die Schaffung eines Europäischen Wirtschaftsraumes, BGBl. Nr. 909/1993, haben.

(2) Ein Begünstigter, dessen Ehegatte sowie Personen, die mit dem Begünstigten in gerader Linie oder bis zum dritten Grad der Seitenlinie verwandt sind, sowie juristische Personen können nicht Mitglieder des Stiftungsvorstands sein.

(3) Ist ein Begünstigter eine juristische Person, an der eine natürliche Person im Sinn des § 244 Abs. 2 HGB beteiligt ist, so können diese natürliche Person, deren Ehegatte sowie Personen, die mit der natürlichen Person in gerader Linie oder bis zum dritten Grad der

Seitenlinie verwandt sind, nicht Mitglieder des Stiftungsvorstands sein.

(4) Der erste Stiftungsvorstand wird vom Stifter oder vom Stiftungskurator (§ 8 Abs. 3 Z 1) bestellt.

(5) Die jeweiligen Mitglieder des Stiftungsvorstands und ihre Vertretungsbefugnis sowie das Erlöschen oder eine Änderung ihrer Vertretungsbefugnis sind ohne Verzug zur Eintragung in das Firmenbuch anzumelden. Der Anmeldung ist der Nachweis der Bestellung oder der Änderung in öffentlich beglaubigter Form beizufügen. Zugleich haben die Mitglieder des Stiftungsvorstands ihre öffentlich beglaubigte Musterzeichnung vorzulegen.

Zeichnung

§ 16. Die Mitglieder des Stiftungsvorstands haben in der Weise zu zeichnen, daß sie dem Namen der Privatstiftung ihre Unterschrift beifügen.

Aufgaben des Stiftungsvorstands, Vertretung der Privatstiftung

§ 17. (1) Der Stiftungsvorstand verwaltet und vertritt die Privatstiftung und sorgt für die Erfüllung des Stiftungszwecks. Er ist verpflichtet,

dabei die Bestimmungen der Stiftungserklärung einzuhalten.

(2) Jedes Mitglied des Stiftungsvorstands hat seine Aufgaben sparsam und mit der Sorgfalt eines gewissenhaften Geschäftsleiters zu erfüllen. Der Stiftungsvorstand darf Leistungen an Begünstigte zur Erfüllung des Stiftungszwecks nur dann und soweit

vornehmen, wenn dadurch Ansprüche von Gläubigern der Privatstiftung nicht geschmälert werden.

(3) Wenn die Stiftungserklärung nichts anderes bestimmt, so sind sämtliche Mitglieder des Stiftungsvorstands nur gemeinschaftlich zur Abgabe von Willenserklärungen und zur Zeichnung für die Privatstiftung befugt. Der Stiftungsvorstand kann einzelne Mitglieder des Stiftungsvorstands zur Vornahme bestimmter Geschäfte oder bestimmter Arten von

Geschäften ermächtigen. Ist eine Willenserklärung der Privatstiftung gegenüber abzugeben, so genügt die Abgabe gegenüber einem Mitglied des Stiftungsvorstands.

(4) Sitzungen des Stiftungsvorstands können in angemessener Frist vom Vorsitzenden, seinem Stellvertreter oder von zwei Dritteln der Mitglieder des Stiftungsvorstands einberufen werden.

(5) Wenn die Privatstiftung keinen Aufsichtsrat hat, bedürfen Rechtsgeschäfte der Privatstiftung mit einem Mitglied des Stiftungsvorstands der Genehmigung aller

übrigen Mitglieder des Stiftungsvorstands und des Gerichts.

Rechnungslegung

§ 18. Der Stiftungsvorstand hat die Bücher der Privatstiftung zu führen; hiebei sind die §§ 189 bis 216, 222 bis 226 Abs. 1, 226 Abs. 3 bis 234 und 236 bis 239 HGB, der § 243 HGB über den Lagebericht sowie die §§ 244 bis 267 HGB über den Konzernabschluß und den Konzernlagebericht sinngemäß anzuwenden. Im Lagebericht ist auch auf die Erfüllung des Stiftungszwecks einzugehen.

Vergütung der Mitglieder des Stiftungsvorstands

§ 19. (1) Soweit in der Stiftungserklärung nichts anderes vorgesehen ist, ist den Mitgliedern des Stiftungsvorstands für ihre Tätigkeit eine mit ihren Aufgaben und mit der Lage der Privatstiftung in Einklang stehende Vergütung zu gewähren.

(2) Die Höhe der Vergütung ist, soweit in der Stiftungserklärung nichts anderes vorgesehen ist, auf Antrag eines Stiftungsorgans oder eines Organmitglieds vom Gericht zu bestimmen.

Stiftungsprüfer

§ 20. (1) Der Stiftungsprüfer ist vom Gericht, gegebenenfalls vom Aufsichtsrat zu bestellen.

(2) Zum Stiftungsprüfer dürfen nur Beeidete Wirtschaftsprüfer und Steuerberater oder

Wirtschaftsprüfungs- und Steuerberatungsgesellschaften oder Beeidete Buchprüfer und Steuerberater oder Buchprüfungs- und Steuerberatungsgesellschaften bestellt werden.

(3) Der Stiftungsprüfer darf weder Begünstigter noch Mitglied eines anderen Stiftungsorgans, noch Arbeitnehmer der Privatstiftung, noch in einem Unternehmen beschäftigt sein, auf das die Privatstiftung maßgeblichen Einfluß nehmen kann, noch eine dieser Stellungen in den letzten drei Jahren innegehabt haben, noch zusammen mit einer ausgeschlossenen Person seinen Beruf ausüben, noch ein naher Angehöriger (§15 Abs. 2) einer ausgeschlossenen Person sein.

(4) Für die Vergütung des Stiftungsprüfers gilt § 270 Abs. 5 HGB sinngemäß.

Prüfung

§ 21. (1) Der Stiftungsprüfer hat den Jahresabschluß einschließlich der Buchführung und den Lagebericht innerhalb von drei Monaten ab Vorlage zu prüfen. Hinsichtlich Gegenstand und Umfang der Prüfung gilt § 269 Abs. 1 HGB, hinsichtlich des Auskunftsrechts § 272 HGB sinngemäß.

(2) Den Stiftungsprüfer trifft keine Verschwiegenheitspflicht gegenüber anderen Stiftungsorganen und gegenüber den in der Stiftungserklärung mit Prüfungsaufgaben betrauten Personen. Für die Verantwortlichkeit des Stiftungsprüfers gilt § 275 HGB sinngemäß.

(3) Die §§ 273 und 274 HGB über den Prüfungsbericht und den Bestätigungsvermerk sind sinngemäß anzuwenden. Der Prüfungsbericht ist den übrigen Organen der Privatstiftung vorzulegen.

(4) Bei Meinungsverschiedenheiten zwischen dem Stiftungsprüfer und anderen Stiftungsorganen

über die Auslegung und Anwendung von gesetzlichen Vorschriften

sowie der Stiftungserklärung entscheidet auf Antrag eines Stiftungsorgans das Gericht.

Aufsichtsrat

§ 22. (1) Ein Aufsichtsrat ist zu bestellen, wenn

1. die Anzahl der Arbeitnehmer der Privatstiftung dreihundert übersteigt oder

2. die Privatstiftung inländische Kapitalgesellschaften oder inländische Genossenschaften einheitlich leitet (§ 15 Abs. 1 Aktiengesetz 1965) oder auf Grund einer unmittelbaren Beteiligung von mehr als 50 Prozent beherrscht und in beiden Fällen die Anzahl der

Arbeitnehmer dieser Gesellschaften beziehungsweise Genossenschaften im Durchschnitt dreihundert übersteigt und sich die Tätigkeit der Privatstiftung nicht nur auf die Verwaltung von Unternehmensanteilen der beherrschten Unternehmen beschränkt.

(2) Der jeweilige Durchschnitt der Arbeitnehmeranzahl bestimmt sich nach den Arbeitnehmeranzahlen an den jeweiligen Monatsletzten innerhalb des vorangegangenen

Kalenderjahres.

(3) Der Stiftungsvorstand hat im Fall des Abs. 1 nach Maßgabe der folgenden Bestimmungen jeweils zum 1. Jänner den Durchschnitt der Arbeitnehmeranzahl der im

vorangegangenen Jahr beschäftigten Arbeitnehmer festzustellen. Übersteigt die Durchschnittszahl dreihundert, so hat er dies dem Gericht mitzuteilen; die nächste Feststellung der Arbeitnehmeranzahl ist jeweils drei Jahre nach dem im ersten Satz genannten Stichtag zum 1. Jänner durchzuführen. Eine Änderung der Arbeitnehmeranzahl innerhalb der jeweiligen drei Jahre ist auf die Notwendigkeit des Vorhandenseins eines Aufsichtsrats ohne Einfluß. Wird bei einer der Feststellungen ermittelt, daß die Durchschnittszahl dreihundert nicht übersteigt, so ist die nächste Feststellung jeweils zum 1. Jänner der folgenden Jahre bis zur Feststellung der Überschreitung der Zahl dreihundert zu wiederholen. Die vertretungsbefugten Organe der in Abs.1 Z 2 genannten Gesellschaften bzw. Genossenschaften haben dem Stiftungsvorstand auf dessen Verlangen die für die Feststellung erforderlichen Auskünfte rechtzeitig zu erteilen.

(4) § 110 ArbVG gilt für Privatstiftungen sinngemäß wie für Gesellschaften mit beschränkter Haftung.

Zusammensetzung des Aufsichtsrats

§ 23. (1) Der Aufsichtsrat muß aus mindestens drei natürlichen Personen bestehen.

(2) Die Mitglieder des Aufsichtsrats und deren Angehörige (§ 15 Abs. 2) dürfen nicht zugleich dem Stiftungsvorstand angehören oder Stiftungsprüfer sein. Begünstigte oder deren Angehörige (§ 15 Abs. 2) dürfen nicht die Mehrheit der Aufsichtsratmitglieder

stellen.

(3) Mitglied des Aufsichtsrats kann nicht sein, wer in zehn Privatstiftungen Mitglied des Aufsichtsrats oder eines vergleichbaren Organs ist.

Bestellung und Abberufung des Aufsichtsrats

§ 24. (1) Der Aufsichtsrat wird vom Gericht bestellt, der erste Aufsichtsrat bei Errichtung der Privatstiftung vom Stifter oder vom Stiftungskurator (§ 8 Abs. 3 Z 1).

(2) Das Gericht hat den Aufsichtsrat abzuberufen, wenn die Privatstiftung nicht mehr aufsichtsratspflichtig ist.

(3) Jedes Mitglied des Aufsichtsrats kann sein Amt unter Einhaltung einer mindestens vierwöchigen Frist auch ohne wichtigen Grund mit schriftlicher Anzeige an die Privatstiftung und das Gericht zurücklegen.

Aufgaben des Aufsichtsrats, Vertretung der Privatstiftung

§ 25. (1) Der Aufsichtsrat hat die Geschäftsführung und die Gebarung der Privatstiftung zu überwachen. Für das Auskunfts- und Einsichtsrecht des Aufsichtsrats gilt § 95 Abs. 2 und 3, für die Zustimmung zu bestimmten Geschäften der Privatstiftung § 95 Abs. 5 Z 1, 2, 4 bis 6 Aktiengesetz 1965 sinngemäß.

(2) Der Aufgabenbereich des nach § 22 Abs. 1 Z 2 bestellten Aufsichtsrats ist auf Angelegenheiten der einheitlichen Leitung oder unmittelbaren Beherrschung inländischer Kapitalgesellschaften beziehungsweise inländischer Genossenschaften beschränkt.

(3) Der Aufsichtsrat vertritt die Privatstiftung bei der Vornahme von Rechtsgeschäften mit den Vorstandsmitgliedern.

(4) Die Stiftungserklärung kann den Zuständigkeitsbereich des Aufsichtsrats nach Abs. 1 bis 3 erweitern.

(5) Für die Einberufung des nach § 22 Abs. 1 bestellten Aufsichtsrats gilt § 94 Aktiengesetz 1965.

Vergütung der Mitglieder des Aufsichtsrats

§ 26. (1) Soweit in der Stiftungserklärung nichts anderes vorgesehen ist, ist den Mitgliedern des Aufsichtsrats für ihre Tätigkeit eine mit ihren Aufgaben und mit der Lage der Privatstiftung in Einklang stehende Vergütung zu gewähren.

(2) Die Höhe der Vergütung ist vom Gericht auf Antrag eines Stiftungsorgans oder eines Organmitglieds zu bestimmen.

Gerichtliche Bestellung und Abberufung von Stiftungsorganen und deren Mitgliedern

§ 27. (1) Soweit die nach Gesetz oder Stiftungserklärung vorgeschriebenen Mitglieder von Stiftungsorganen fehlen, hat sie das Gericht auf Antrag oder von Amts wegen zu

bestellen.

(2) Das Gericht hat ein Mitglied eines Stiftungsorgans auf Antrag oder von Amts wegen abzuberufen, wenn dies die Stiftungserklärung vorsieht oder sonst ein wichtiger Grund vorliegt. Als wichtiger Grund gilt insbesondere

1. eine grobe Pflichtverletzung,

2. die Unfähigkeit zur ordnungsgemäßen Erfüllung der Aufgaben,

3. die Eröffnung eines Insolvenzverfahrens über das Vermögen des Mitglieds, die Abweisung eines solchen Insolvenzverfahrens mangels kostendeckenden Vermögens sowie die mehrfache erfolglose Exekution in dessen Vermögen.

Innere Ordnung von Stiftungsorganen

§ 28. Ein Stiftungsorgan, das aus mindestens drei Mitgliedern besteht,

1. wählt aus seiner Mitte einen Vorsitzenden und wenigstens einen Stellvertreter;

2. faßt, wenn die Stiftungserklärung nichts anderes vorsieht, unbeschadet des § 35 Abs. 2 die Beschlüsse mit einfacher Mehrheit der Stimmen aller Mitglieder, wobei bei Stimmengleichheit die Stimme des Vorsitzenden den Ausschlag gibt;

3. kann Beschlüsse schriftlich fassen, wenn kein Mitglied widerspricht.

Haftung der Mitglieder von Stiftungsorganen

§ 29. Unbeschadet des § 21 Abs. 2 letzter Satz über die Haftung des Stiftungsprüfers haftet der Privatstiftung jedes Mitglied eines Stiftungsorgans für den aus seiner schuldhaften Pflichtverletzung entstandenen Schaden.

Auskunftsanspruch des Begünstigten

§ 30. (1) Ein Begünstigter kann von der Privatstiftung die Erteilung von Auskünften über die Erfüllung des Stiftungszwecks sowie die Einsichtnahme in den Jahresabschluß, den Lagebericht, den Prüfungsbericht, die Bücher, in die Stiftungsurkunde und in die Stiftungszusatzurkunde verlangen.

(2) Kommt die Privatstiftung diesem Verlangen in angemessener Frist nicht nach, so kann das Gericht auf Antrag des Begünstigten die Einsicht, gegebenenfalls durch einen Buchsachverständigen, anordnen. Für das Verfahren gelten die §§ 385 bis 389 ZPO sinngemäß.

Sonderprüfung

§ 31. (1) Jedes Stiftungsorgan und jedes seiner Mitglieder kann zur Wahrung des Stiftungszwecks bei Gericht die Anordnung einer Sonderprüfung beantragen.

(2) Das Gericht hat die Sonderprüfung anzuordnen, wenn glaubhaft gemacht wird, daß Unredlichkeiten oder grobe Verletzungen des Gesetzes oder der Stiftungserklärung vorgekommen sind.

(3) Die Bestellung eines Sonderprüfers kann auf Antrag von einer angemessenen Sicherheitsleistung abhängig gemacht werden. Auf Antrag entscheidet das Gericht je nach den Ergebnissen der Sonderprüfung, ob die Kosten vom Antragsteller oder von der

Privatstiftung zu tragen oder verhältnismäßig aufzuteilen sind. Erweist sich der Antrag nach dem Ergebnis der Sonderprüfung als unbegründet und trifft die Antragsteller Vorsatz oder grobe Fahrlässigkeit, so haften sie der Privatstiftung für den aus der

Sonderprüfung entstehenden Schaden als Gesamtschuldner.

(4) Im übrigen gelten für die Sonderprüfung und die Bestellung des Sonderprüfers § 20 Abs. 2 und 3 und § 21 Abs. 2. Hinsichtlich des Auskunftsrechts gilt § 272 HGB sinngemäß.

(5) Das Gericht hat auf Grund der Ergebnisse der Sonderprüfung festzustellen, ob die behaupteten Unredlichkeiten oder groben Verletzungen des Gesetzes oder der Stiftungserklärung vorgekommen sind, und für die erforderlichen Maßnahmen zur Wahrung des Stiftungszwecks Sorge zu tragen.

Angaben in Geschäftsbriefen und Bestellscheinen

§ 32. Für die Privatstiftung gilt § 14 HGB mit der Maßgabe, daß auch die für Zustellungen maßgebliche Anschrift der Privatstiftung und der Stiftungsvorstand anzugeben sind.

Änderung der Stiftungserklärung

§ 33. (1) Vor dem Entstehen einer Privatstiftung kann die Stiftungserklärung vom Stifter widerrufen oder abgeändert werden; wenn einer von mehreren Stiftern weggefallen ist, kann die Stiftungserklärung nicht widerrufen und nur unter Wahrung des Stiftungszwecks

geändert werden. Ist der einzige oder letzte Stifter weggefallen, so kann der Stiftungsvorstand unter Wahrung des Stiftungszwecks Änderungen zur Berücksichtigung mittlerweile hervorgekommener Eintragungshindernisse und geänderter Verhältnisse vornehmen.

(2) Nach dem Entstehen einer Privatstiftung kann die Stiftungserklärung vom Stifter nur geändert werden, wenn er sich Änderungen vorbehalten hat. Ist eine Änderung wegen Wegfalls eines Stifters, mangels Einigkeit bei mehreren Stiftern oder deswegen nicht möglich, weil Änderungen nicht vorbehalten sind, so kann der Stiftungsvorstand unter Wahrung des Stiftungszwecks Änderungen der Stiftungserklärung zur Anpassung an

geänderte Verhältnisse vornehmen. Die Änderung bedarf der Genehmigung des Gerichts.

(3) Der Stiftungsvorstand hat die Änderung der Stiftungsurkunde unter Anschluß einer öffentlich beglaubigten Abschrift des Änderungsbeschlusses und die Tatsache der Änderung der Stiftungszusatzurkunde zur Eintragung in das Firmenbuch anzumelden. Die Änderung wird mit der Eintragung in das Firmenbuch wirksam.

Widerruf der Privatstiftung

§ 34. Eine Privatstiftung kann vom Stifter nur dann widerrufen werden, wenn er sich den Widerruf in der Stiftungserklärung vorbehalten hat. Einem Stifter, der eine juristische Person ist, kann ein Widerruf nicht vorbehalten werden.

Auflösung

§ 35. (1) Die Privatstiftung wird aufgelöst, sobald

1. die in der Stiftungserklärung vorgesehene Dauer abgelaufen ist;

2. über das Vermögen der Privatstiftung der Konkurs eröffnet worden ist;

3. der Beschluß, durch den die Eröffnung des Konkurses mangels eines zur Deckung der Kosten des Konkursverfahrens voraussichtlich hinreichenden Vermögens abgelehnt wird, Rechtskraft erlangt hat;

4. der Stiftungsvorstand einen einstimmigen Auflösungsbeschluß gefaßt hat;

5. das Gericht die Auflösung beschlossen hat.

(2) Der Stiftungsvorstand hat einen einstimmigen Auflösungsbeschluß zu fassen, sobald

1. ihm ein zulässiger Widerruf des Stifters zugegangen ist;

2. der Stiftungszweck erreicht oder nicht mehr erreichbar ist;

3. eine nicht gemeinnützige Privatstiftung, deren überwiegender Zweck die Versorgung von natürlichen Personen ist, 100 Jahre gedauert hat, es sei denn, daß alle etztbegünstigten einstimmig beschließen, die Privatstiftung für einen weiteren Zeitraum, längstens jedoch jeweils für 100 Jahre, fortzusetzen;

4. andere in der Stiftungserklärung dafür genannte Gründe gegeben sind.

(3) Kommt ein Beschluß nach Abs. 2 trotz Vorliegens eines Auflösungsgrundes nicht zustande, so kann jedes Mitglied eines Stiftungsorgans, jeder Begünstigte oder Letztbegünstigte, jeder Stifter und jede in der Stiftungserklärung dazu ermächtigte Person die Auflösung durch das Gericht beantragen. Das Gericht hat die Privatstiftung überdies aufzulösen, wenn sie gegen § 1 Abs. 2 verstößt und innerhalb angemessener Frist einer rechtskräftigen Unterlassungsanordnung nicht nachgekommen ist.

(4) Hat der Stiftungsvorstand einen einstimmigen Auflösungsbeschluß gefaßt, obwohl ein

Auflösungsgrund nicht vorliegt, so kann jede der in Abs. 3 genannten Personen beim Gericht die Aufhebung des Beschlusses beantragen.

(5) In den Fällen des Abs. 1 Z 1 und 4 hat der Stiftungsvorstand die Auflösung der Privatstiftung zur Eintragung in das Firmenbuch anzumelden. Die Auflösung ist mit der Eintragung wirksam.

(6) Ist die Privatstiftung auf Grund eines Gerichtsbeschlusses aufgelöst, so hat das Gericht das Firmenbuchgericht zu benachrichtigen. Die Auflösung ist von Amts wegen in das Firmenbuch einzutragen.

Abwicklung

§ 36. (1) Der Stiftungsvorstand hat die Gläubiger der Privatstiftung unter Hinweis auf die Auflösung aufzufordern, ihre Ansprüche spätestens innerhalb eines Monats nach Veröffentlichung der Aufforderung anzumelden. Diese Aufforderung an die Gläubiger ist ohne Verzug im,,Amtsblatt zur Wiener Zeitung'' zu veröffentlichen.

(2) § 213 Aktiengesetz 1965 über den Gläubigerschutz ist anzuwenden. Das verbleibende Vermögen der aufgelösten Privatstiftung ist dem Letztbegünstigten zu übertragen.

(3) Ist kein Letztbegünstigter vorhanden oder will der Letztbegünstigte das verbleibende Vermögen nicht übernehmen und ergibt sich aus der Stiftungserklärung sonst keine Regelung, so fällt das verbleibende Vermögen der Republik Österreich anheim.

(4) Wird die Privatstiftung zufolge Widerrufs aufgelöst und ist in der Stiftungserklärung nichts anderes vorgesehen, so ist der Stifter Letztbegünstigter.

(5) Soweit in der Stiftungserklärung nichts anderes vorgesehen ist, teilen mehrere Letztbegünstigte zu gleichen Teilen.

Löschung

§ 37. (1) Ist die Abwicklung beendet und darüber Schlußrechnung gelegt, so hat der Stiftungsvorstand den Schluß der Abwicklung zur Eintragung in das Firmenbuch anzumelden. Der Schluß der Abwicklung ist einzutragen und die Privatstiftung zu löschen.

(2) Die Bücher und Schriften der Privatstiftung sind an einem vom Gericht bestimmten sicheren Ort zur Aufbewahrung auf sieben Jahre zu hinterlegen.

(3) Stellt sich nachträglich heraus, daß weitere Abwicklungsmaßnahmen nötig sind, so hat das Gericht

hiefür den bisherigen Stiftungsvorstand oder einen

Abwickler zu bestellen.

Umwandlung

§ 38. (1) Stiftungen, die nach dem Bundes-Stiftungs- und Fondsgesetz errichtet sind, können in Privatstiftungen umgewandelt werden. Auf Grund eines Umwandlungsbeschlusses, der jedenfalls die Angaben gemäß § 9 Abs. 1 zu enthalten hat, haben die Stiftungsorgane eine Stiftungserklärung abzugeben und den ersten Stiftungsvorstand, gegebenenfalls den ersten Aufsichtsrat zu bestellen.

(2) Mit dem Antrag auf Genehmigung der Umwandlung sind der Stiftungsbehörde die

Stiftungserklärung und der Stiftungsvorstand bekanntzugeben. Die Stiftungsbehörde hat den Umwandlungsbeschluß zu genehmigen, wenn nicht wichtige Gründe gegen eine Umwandlung sprechen. Bei der Entscheidung ist darauf Bedacht zu nehmen, daß nach dem Inhalt der Stiftungserklärung dem Willen des Stifters und dem Zweck der Stiftung Rechnung getragen wird.

(3) Mit der Anmeldung zur Eintragung der Privatstiftung in das Firmenbuch (§ 12) hat der Stiftungsvorstand den rechtskräftigen Bescheid über die Genehmigung der Umwandlung und einen Prüfungsbericht im Sinn des § 11 vorzulegen.

(4) Mit der Eintragung im Firmenbuch besteht die Stiftung als Privatstiftung weiter. Der Beschluß über die Eintragung im Firmenbuch ist der Stiftungsbehörde zur Eintragung in das Register über Stiftungen und Fonds zuzustellen.

Formerfordernis

§ 39. (1) Stiftungserklärungen, deren Änderung durch den Stifter und Erklärungen des Stifters, die auf das Bestehen der Stiftung Einfluß haben, bedürfen der Beurkundung durch Notariatsakt, letztwillige Stiftungserklärungen (§ 8 Abs. 1) außerdem der Form

einer letztwilligen Anordnung.

(2) Beschlüsse von Stiftungsorganen, die zu Eintragungen im Firmenbuch führen, sind von einem Notar in einer Niederschrift zu beurkunden.

(3) Der Anmeldung einer Änderung der Stiftungsurkunde zur Eintragung in das Firmenbuch ist der vollständige Wortlaut der geänderten Stiftungsurkunde beizufügen; er muß mit der Beurkundung eines Notars versehen sein, daß die geänderten Bestimmungen der Stiftungsurkunde mit dem Beschluß über ihre Änderung und die unveränderten Bestimmungen mit dem zuletzt zum Firmenbuch eingereichten vollständigen Wortlaut der Stiftungsurkunde übereinstimmen.

Gericht, Verfahren

§ 40. Über Angelegenheiten, die in diesem Bundesgesetz dem Gericht zugewiesen sind, verhandelt und entscheidet, sofern es sich nicht um Angelegenheiten handelt, die dem Prozeßgericht zugewiesen sind, der für den Sitz der Privatstiftung zuständige, zur Ausübung der Gerichtsbarkeit in Handelssachen berufene Gerichtshof erster Instanz im

Verfahren außer Streitsachen.

Strafbestimmung

§ 41. Mit Freiheitsstrafe bis zu zwei Jahren oder mit Geldstrafe bis zu 360 Tagessätzen ist vom Gericht zu bestrafen, wer als Mitglied des Stiftungsvorstands oder des Aufsichtsrats, als Beauftragter oder Abwickler

1. in Darstellungen oder in Übersichten über den Vermögensstand der Privatstiftung, insbesondere in Jahresabschlüssen, die Verhältnisse der Privatstiftung unrichtig wiedergibt oder erhebliche Umstände verschweigt,

2. in Auskünften, die nach § 272 HGB einem Stiftungsprüfer oder die sonstigen Prüfern der Privatstiftung zu geben sind, erhebliche Umstände verschweigt, die Verhältnisse der Privatstiftung unrichtig wiedergibt oder sonst falsche Angaben macht oder

3. über die im Anhang (§§ 236 bis 239 HGB) oder im Lagebericht (§ 243 HGB) anzugebenden Tatsachen falsche Angaben macht oder erhebliche Umstände verschweigt.

Artikel X

Verweisungen

Soweit in diesem Bundesgesetz auf Bestimmungen anderer Bundesgesetze verwiesen wird, sind diese in der jeweils geltenden Fassung anzuwenden.

Artikel XI

Inkrafttreten, Vollziehungsklausel

(1) Dieses Bundesgesetz tritt mit 1. September 1993 in Kraft, Art. V Z 10 jedoch bereits mit 1. Juli.

(2) Mit der Vollziehung der Art. V bis VIII dieses Bundesgesetzes ist der Bundesminister für Finanzen, hinsichtlich des Art. IX der Bundesminister für Finanzen im Einvernehmen mit dem Bundesminister für Justiz, hinsichtlich des Art. IV der Bundesminister für Justiz im Einvernehmen mit dem Bundesminister für Finanzen, hinsichtlich des Art. I § 38 der

Bundesminister für Inneres im Einvernehmen mit dem Bundesminister für Justiz, hinsichtlich des Art. I § 22 Abs. 4 der Bundesminister für Arbeit und Soziales im Einvernehmen mit dem Bundesminister für Justiz, hinsichtlich des Art. X die jeweils betroffenen Bundesminister und im übrigen der Bundesminister für Justiz betraut.

4.2.2. Law on Federal Foundations and Funds

"Bundesstiftungs- und Fondsgesetz (BSFG)" of 27 November 1974[324]

I. ABSCHNITT

Allgemeine Bestimmungen

Anwendungsbereich

[324] http://www.ris.bka.gv.at/bundesrecht/ 22 February 2005.

§ 1. (1) Dieses Bundesgesetz findet auf Stiftungen und Fonds Anwendung, deren Vermögen durch privatrechtlichen Widmungsakt zur Erfüllung gemeinnütziger oder mildtätiger Aufgaben bestimmt ist, sofern sie nach ihren Zwecken über den Interessenbereich eines Landes hinausgehen und nicht schon vor dem 1. Oktober 1925 von den Ländern autonom verwaltet wurden.

(2) Auf Stiftungen und Fonds für Zwecke einer gesetzlich anerkannten Kirche oder Religionsgesellschaft finden die Bestimmungen dieses Bundesgesetzes nur dann Anwendung, wenn diese Stiftungen oder Fonds zu ihrer Errichtung, Abänderung, Auflösung oder Verwaltung nach den für diese gesetzlich anerkannte Kirche oder Religionsgesellschaft geltenden Bestimmungen der staatlichen Genehmigung bedürfen oder der staatlichen Aufsicht unterliegen.

II. ABSCHNITT

Stiftungen

Begriff der Stiftung

§ 2. (1) Stiftungen im Sinne dieses Bundesgesetzes sind durch eine Anordnung des Stifters dauernd gewidmete Vermögen mit Rechtspersönlichkeit, deren Erträgnisse der Erfüllung gemeinnütziger oder mildtätiger Zwecke dienen.

(2) Gemeinnützig im Sinne dieses Bundesgesetzes sind solche Zwecke, durch deren Erfüllung die Allgemeinheit gefördert wird. Eine Förderung der Allgemeinheit liegt insbesondere vor, wenn die Tätigkeit der Stiftung dem Gemeinwohl auf geistigem, kulturellem, sittlichem, sportlichem oder materiellem Gebiet nützt. Der Stiftungszweck gilt auch dann im Sinne dieses Bundesgesetzes als gemeinnützig, wenn durch die Tätigkeit der Stiftung nur ein bestimmter Personenkreis gefördert wird.

(3) Mildtätig im Sinne dieses Bundesgesetzes sind solche Zwecke, die darauf gerichtet sind, hilfsbedürftige Personen zu unterstützen.

Voraussetzungen für die Errichtung einer Stiftung

§ 3. Zur Errichtung einer Stiftung sind die Erklärung des Stifters, durch Zweckwidmung eines bestimmten Vermögens eine Stiftung errichten zu wollen (Stiftungserklärung), sowie die behördliche Entscheidung, daß die in der Stiftungserklärung vorgesehene Errichtung der Stiftung zulässig ist, erforderlich.

Stiftungserklärung

§ 4. (1) Die Stiftungserklärung hat zu enthalten:

1. die Willenserklärung des Stifters, ein bestimmtes Vermögen für die Errichtung einer Stiftung dauernd zu widmen,

2. die Angabe des für den Stiftungszweck gewidmeten Vermögens (Stammvermögens),

3. die Angabe des gemeinnützigen oder mildtätigen Zweckes der Stiftung.

(2) Die Stiftungserklärung muß schriftlich abgefaßt sein und kann überdies einen Vorschlag für die Bestellung eines Stiftungskurators (§ 7 Abs. 2) sowie weitere Angaben im Sinne des § 10 Abs. 2 enthalten, die in die Satzung der Stiftung aufzunehmen sind.

(3) Soll die Stiftung zu Lebzeiten des Stifters errichtet werden, so muß die Stiftungserklärung unwiderruflich gegenüber der Stiftungsbehörde (§ 39) abgegeben werden und mit der gerichtlich oder notariell beglaubigten Unterschrift des Stifters versehen sein.

(4) Bei Stiftungen von Todes wegen bedarf die Stiftungserklärung der Form einer letztwilligen Anordnung.

Zulässigkeit der Errichtung einer Stiftung

§ 5. (1) Die Errichtung einer Stiftung ist zulässig, wenn

1. die Stiftungserklärung dem § 4 entspricht,

2. der Stiftungszweck gemeinnützig oder mildtätig und

3. das Stiftungsvermögen zur dauernden Erfüllung des Stiftungszweckes hinreichend ist.

(2) Das Stiftungsvermögen ist nicht hinreichend, wenn die Erträgnisse voraussichtlich auf längere Sicht oder dauernd nur die Erhaltung von Liegenschaften ermöglichen, ohne daß diese der unmittelbaren Erfüllung des Stiftungszweckes dienen.

Entscheidung über die Zulässigkeit

§ 6. (1) Bei Stiftungen unter Lebenden hat der Stifter die Stiftungserklärung der Stiftungsbehörde

vorzulegen. Bei Stiftungen von Todes wegen hat das Verlassenschaftsgericht von der letztwilligen Anordnung die Finanzprokuratur zu verständigen. Dieser obliegen die Abgabe der Erbserklärung oder die Erklärung über die Annahme des Vermächtnisses zugunsten der letztwillig bedachten Stiftung sowie die

Vertretung der Stiftung bis zur Bestellung des Stiftungskurators (§ 7).

(2) Über die Zulässigkeit der Errichtung einer Stiftung entscheidet die Stiftungsbehörde.

(3) Im Verfahren über die Zulässigkeit der Errichtung einer Stiftung kommen bei Stiftungen unter Lebenden dem Stifter und der Finanzprokuratur, bei Stiftungen von Todes wegen der Finanzprokuratur und den Erben des Stifters sowie dem estamentsvollstrecker Parteistellung zu.

(4) Mit der Entscheidung, daß die Errichtung der Stiftung zulässig ist, erlangt die Stiftung Rechtspersönlichkeit. Die Stiftungsbehörde hat die Errichtung einer Stiftung im "Amtsblatt zur Wiener Zeitung" zu verlautbaren. Die Verlautbarung hat den Namen, Sitz und den Zweck der Stiftung zu enthalten. Die Kosten der Verlautbarung hat die Stiftung zu tragen.

Stiftungskurator

§ 7. (1) Für Stiftungen, die als zulässig erklärt wurden, hat die Stiftungsbehörde einen Stiftungskurator zu bestellen. Die Bestellung bedarf seines Einverständnisses.

(2) Zum Stiftungskurator ist die in der Stiftungserklärung vorgeschlagene Person zu bestellen. Wird in der Stiftungserklärung kein Stiftungskurator vorgeschlagen, so ist der Stiftungskurator aus dem Kreis der allenfalls namhaft gemachten Verwaltungsorgane unter Bedachtnahme auf deren Reihenfolge zu bestellen.

(3) Lehnen die im Abs. 2 genannten Personen die Bestellung zum Stiftungskurator ab oder sind in der Stiftungserklärung keine Personen namhaft gemacht, die für die Bestellung zum Stiftungskurator in Betracht kommen, so kann auch eine andere Person zum Stiftungskurator bestellt werden, die zur Vertretung der Stiftung geeignet ist.

(4) Dem Stiftungskurator obliegen nachstehende Aufgaben:

1. die Verwaltung des Stiftungsvermögens und die Vertretung der Stiftung, sofern diese nicht der Finanzprokuratur obliegt,

2. die Vorlage der Stiftungssatzung (§ 10 Abs. 1),

3. die Erstellung der für die erstmalige Bestellung der Verwaltungs- und Vertretungsorgane der Stiftung erforderlichen Vorschläge (§ 11 Abs. 1).

(5) Kommt ein Stiftungskurator seinen Aufgaben nicht gehörig oder nicht fristgerecht nach, so ist er von der Stiftungsbehörde abzuberufen und durch einen anderen Stiftungskurator zu ersetzen.

(6) Der Stiftungskurator hat gegenüber der Stiftung Anspruch auf eine angemessene Entschädigung.

Name der Stiftung

§ 8. (1) Der Name der Stiftung hat die ausdrückliche Bezeichnung als Stiftung sowie zur Unterscheidung von anderen Stiftungen den Namen einer physischen oder juristischen Person oder einen Hinweis auf den Stiftungszweck oder sowohl den Namen einer Person als auch einen Hinweis auf den Stiftungszweck zu enthalten. Ist zur Führung des Namens der Stiftung die Zustimmung eines Dritten erforderlich, so kann die Stiftung diesen Namen nur dann führen, wenn diese Zustimmung vorliegt.

(2) Der Bescheid über die Zulässigkeit der Errichtung einer Stiftung hat den Namen der Stiftung unter Bedachtnahme auf den in der Stiftungserklärung angegebenen Namen der Stiftung anzuführen, sofern dieser den Voraussetzungen des Abs. 1 entspricht.

(3) Ist in der Stiftungserklärung der Name der Stiftung nicht angeführt oder die angegebene Namensführung unzulässig, so hat die Stiftungsbehörde unter Bedachtnahme auf die Bestimmungen des Abs. 1 den Namen der Stiftung festzusetzen.

(4) Die Stiftung hat in ihrem Schriftverkehr ihren Namen zu führen.

Sitz der Stiftung

§ 9. (1) Im Bescheid über die Zulässigkeit der Errichtung einer Stiftung ist auch der Sitz der Stiftung anzuführen.

(2) Der Sitz der Stiftung hat im Inland zu liegen. Er richtet sich nach der Stiftungserklärung. Enthält diese keine Bestimmung, so hat die

Stiftungsbehörde den Ort als Sitz der Stiftung zu bestimmen, an dem die Verwaltung zu führen ist.

Stiftungssatzung

§ 10. (1) Der Stiftungskurator hat binnen sechs Monaten ab seiner Bestellung die Stiftungssatzung der Stiftungsbehörde in dreifacher Ausfertigung vorzulegen.

(2) Die Stiftungssatzung hat zu enthalten:

1. den Namen und den Sitz der Stiftung;

2. Angaben über die Errichtung der Stiftung sowie über das Stammvermögen der Stiftung;

3. Angaben über den Zweck der Stiftung, die Verwendung der Erträgnisse, den durch die Stiftung begünstigten Personenkreis sowie die Vorgangsweise bei der Zuerkennung des Stiftungsgenusses;

4. die Bezeichnung der Verwaltungs- und Vertretungsorgane der Stiftung (Stiftungsorgane) sowie Bestimmungen über ihre Bestellung und Abberufung;

5. die Erfordernisse gültiger Beschlußfassungen, wenn das Verwaltungs- oder Vertretungsorgan der Stiftung aus mehr als einer Person besteht, und der Bekanntmachungen;

6. Bestimmungen über die Befugnisse sowie über die allfällige Zuerkennung von Entschädigungen an die Verwaltungs- und Vertretungsorgane der Stiftung;

7. Bestimmungen über die jährliche Rechnungslegung an die Stiftungsbehörde hinsichtlich des Vermögens der Stiftung sowie über Rechtsgeschäfte, die nach diesem Bundesgesetz zu ihrer Rechtswirksamkeit der Genehmigung der Stiftungsbehörde bedürfen;

8. Bestimmungen über die Zuwendung des bei einer Auflösung der Stiftung noch vorhandenen Vermögens (§ 21 Abs. 1 und 2).

(3) Die Stiftungssatzung darf die Verwaltung der Stiftung durch Organe einer öffentlich-rechtlichen Körperschaft nur dann vorsehen, wenn hiezu die Zustimmung der obersten Organe dieser öffentlich-rechtlichen Körperschaft vorliegt oder die Stiftung von

der öffentlich-rechtlichen Körperschaft selbst errichtet wird.

(4) Die Stiftungssatzung bedarf der Genehmigung der Stiftungsbehörde. Im Genehmigungsverfahren kommen dem Stifter, dem Stiftungskurator und der Finanzprokuratur Parteistellung zu. Die Genehmigung darf nur dann versagt werden, wenn die Stiftungssatzung den gesetzlichen Bestimmungen nicht entspricht oder mit der als zulässig festgestellten Stiftungserklärung in Widerspruch steht. Ein solcher Widerspruch liegt jedoch nicht vor, wenn die Stiftungssatzung von der Stiftungserklärung Abweichungen enthält, die insbesondere bei letztwillig verfügten Stiftungen dem vermutlichen Willen des Stifters entsprechen und für unbedingt zweckmäßig zu erachten sind.

(5) Wird die Genehmigung versagt, so hat der Stiftungskurator binnen drei Monaten nach Eintritt der Rechtskraft dieses Bescheides eine entsprechend geänderte Stiftungssatzung vorzulegen.

(6) Auf der Stiftungssatzung ist die erfolgte Genehmigung zu beurkunden und diese Ausfertigung dem Stiftungskurator auszuhändigen.

(7) Die Stiftung darf erst mit Genehmigung der Stiftungssatzung ihre Tätigkeit aufnehmen.

Erstmalige Bestellung der Stiftungsorgane

§ 11. (1) Gleichzeitig mit der Stiftungssatzung hat der Stiftungskurator der Stiftungsbehörde unter Bedachtnahme auf die in der Stiftungserklärung angeführten Personen die vorgesehenen Verwaltungs- und Vertretungsorgane der Stiftung namentlich

vorzuschlagen. Diese müssen mit ihrer Bestellung einverstanden sowie - sofern sie natürliche Personen sind - eigenberechtigt und vertrauenswürdig sein.

(2) Die erstmalige Bestellung der Stiftungsorgane obliegt der Stiftungsbehörde. Diese hat die vorgeschlagenen Personen zu bestellen, wenn sie die Voraussetzungen des Abs. 1 erfüllen. Andernfalls ist dem Stiftungskurator aufzutragen, binnen drei Monaten andere geeignete Personen vorzuschlagen.

(3) Mit der Bestellung der Stiftungsorgane endet die Tätigkeit des Stiftungskurators. Gleichzeitig gehen die Verwaltung und die Vertretung der Stiftung auf die Stiftungsorgane über.

Zuständigkeit der Gerichte in Stiftungssachen

§ 12. Ansprüche der Stiftung auf Grund der Stiftungserklärung sowie Ansprüche gegen die Stiftung auf Grund der Stiftungserklärung oder der Stiftungssatzung sind gleich anderen privatrechtlichen Ansprüchen gegen die Stiftung im Rechtswege geltend zu machen.

Staatliche Aufsicht über Stiftungen

§ 13. (1) Die Stiftungen unterliegen nach Maßgabe dieses Bundesgesetzes der Aufsicht der Stiftungsbehörde. Diese hat die Erhaltung des Stammvermögens der Stiftung, die Erfüllung des Stiftungszweckes sowie die ordnungsgemäße Verwaltung der Stiftung

sicherzustellen.

(2) Organe der Stiftungsbehörde, die mit der staatlichen Aufsicht über eine Stiftung betraut sind, dürfen nicht zum Verwalter oder Mitglied eines Verwaltungsorgans dieser Stiftung bestellt werden.

Aufsicht über das Stiftungsvermögen

§ 14. (1) Das der Stiftung gewidmete Vermögen ist in einer den Vorschriften über die Anlegung von Mündelgeld gemäßen Art und Weise anzulegen, sofern der Stifter nichts anderes bestimmt hat. Die Anlage ist der Stiftungsbehörde nachzuweisen.

(2) Änderungen in der Anlegung des der Stiftung gewidmeten Vermögens sind unter den Voraussetzungen des Abs. 1 zulässig, wenn dadurch keine Wertverminderung des Stiftungsvermögens eintritt. Änderungen in der Anlegungsart sind der Stiftungsbehörde mitzuteilen. Rechtsgeschäfte über die Belastung und die Veräußerung von unbeweglichem Stiftungsvermögen bedürfen zu ihrer Rechtswirksamkeit

der Genehmigung der Stiftungsbehörde. Die Genehmigung ist nur dann zu erteilen, wenn durch das Rechtsgeschäft die Erfüllung des Stiftungszweckes weiterhin gewährleistet ist.

(3) Die Stiftungsorgane sind verpflichtet, der Stiftungsbehörde bis Ende Juni eines jeden Jahres einen Rechnungsabschluß über das abgelaufene Kalenderjahr vorzulegen. Dieser hat mindestens die Einnahmen und Ausgaben der Stiftung während des abgelaufenen Kalenderjahres sowie den Vermögensstand der Stiftung, aufgegliedert in Stammvermögen und sonstige Vermögen, zum 31. Dezember des abgelaufenen Kalenderjahres zu enthalten.

(4) Den Organen der Stiftungsbehörde ist jederzeit die Einschau in die Vermögensgebarung und in die Vermögensverwaltung der Stiftung zu gewähren.

Bestimmungen über die Stiftungsorgane

§ 15. (1) Die Stiftungsorgane müssen den Anforderungen des § 11 Abs. 1 zweiter Satz entsprechen. Sie sind verpflichtet, ihre Tätigkeit unter Beachtung der Bestimmungen dieses Bundesgesetzes und der Stiftungssatzung ordentlich und gewissenhaft auszuüben.

(2) Die Stiftungsorgane haben Anspruch auf Entschädigung für ihre Tätigkeit nur aus den Erträgnissen der Stiftung und nur so weit, als die Entschädigung in der Stiftungssatzung ausdrücklich vorgesehen und der Tätigkeit des Stiftungsorgans angemessen ist sowie mit den Erträgnissen der Stiftung in Einklang steht. Durch die Gewährung der Entschädigung darf weiters die Zuerkennung von Stiftungsgenüssen

nicht wesentlich beeinträchtigt werden. Sonst ist die Tätigkeit der Stiftungsorgane ehrenamtlich; sie haben nur Anspruch auf Ersatz der notwendigen Barauslagen.

(3) Über die Entschädigung entscheidet die Stiftungsbehörde.

(4) Jede Bestellung oder Abberufung von Stiftungsorganen ist der Stiftungsbehörde binnen vierzehn Tagen unter Angabe des Namens und der Adresse des Stiftungsorgans bekanntzugeben.

(5) Die Stiftungsbehörde hat Stiftungsorganen, die ihren nach diesem Bundesgesetz oder auf Grund der Stiftungssatzung obliegenden Verpflichtungen gegenüber der Stiftung nicht oder nicht ordnungsgemäß nachkommen, die Erfüllung dieser Verpflichtung unter Setzung einer vier Wochen nicht übersteigenden Frist aufzutragen.

(6) Die Stiftungsbehörde hat die Stiftungsorgane, die nicht die Voraussetzungen des § 11 Abs. 1 zweiter Satz erfüllen oder einem Auftrag nach Abs. 5 nicht entsprechen, abzuberufen.

Bestellung eines Stiftungskommissärs

§ 16. (1) Die Stiftungsbehörde hat für eine Stiftung einen Stiftungskommissär zu bestellen, wenn

1. die bestellten Verwaltungs- und Vertretungsorgane der Stiftung in der zur

Beschlußfassung notwendigen Anzahl ihre Tätigkeit nicht mehr ausüben können,

2. die dauernde Erhaltung des Stammvermögens der Stiftung oder die Erfüllung des Stiftungszweckes durch pflichtwidriges Verhalten eines oder mehrerer Stiftungsorgane gefährdet ist.

(2) Mit der Bestellung des Stiftungskommissärs gehen die Vertretungs- und Verwaltungsbefugnisse der Stiftungsorgane auf diesen über. Sofern die Stiftungssatzung nichts anderes bestimmt, hat der Stiftungskommissär binnen acht Wochen nach seiner Bestellung der Stiftungsbehörde einen Vorschlag für eine Neubestellung der

satzungsmäßig vorgesehenen Stiftungsorgane zu unterbreiten; die Stiftungsbehörde hat die Stiftungsorgane zu bestellen; hiebei ist der § 11 sinngemäß anzuwenden.

(3) Der Stiftungskommissär hat gegenüber der Stiftung Anspruch auf eine angemessene Entschädigung.

(4) Die Stiftungsbehörde kann den Stiftungskommissär abberufen und einen neuen Stiftungskommissär bestellen.

Änderung der Stiftungssatzung

§ 17. (1) Die Änderung der Stiftungssatzung kann durch Beschluß der Stiftungsorgane erfolgen, wobei der Stifterwille zu beachten ist. Dieser Beschluß bedarf der Genehmigung der Stiftungsbehörde.

(2) Die Stiftungsbehörde hat den Stiftungsorganen die Änderung der Stiftungssatzung aufzutragen, soweit dies zur Verwirklichung des Stifterwillens (§ 10 Abs. 4 letzter Satz) erforderlich ist. Kommen die Stiftungsorgane dieser Aufforderung nicht innerhalb von acht Wochen nach, so hat die Stiftungsbehörde die Stiftungssatzung entsprechend zu ändern.

(3) Im Verfahren über die Satzungsänderung ist § 10 Abs. 4 sinngemäß anzuwenden.

(4) Die geänderte Stiftungssatzung ist mit dem Antrag auf Genehmigung der Satzungsänderung der Stiftungsbehörde in dreifacher Ausfertigung vorzulegen. Diese hat die erfolgte Genehmigung auf der geänderten Stiftungssatzung zu beurkunden und eine Ausfertigung dem Vertretungsorgan der Stiftung auszuhändigen.

(5) Die Stiftungsbehörde hat die Änderung der Stiftungssatzung im "Amtsblatt zur Wiener Zeitung" zu verlautbaren, wenn hiedurch der Name, der Sitz oder der Stiftungszweck geändert wurde. Die Kosten der Verlautbarung hat die Stiftung zu tragen.

Besondere Voraussetzungen für die Satzungsänderung

§ 18. (1) Der Name einer Stiftung darf nur dann geändert werden, wenn sich der Personenname, der Stiftungszweck oder das Stammvermögen der Stiftung, die dem Stiftungsnamen zugrunde liegen, geändert haben.

(2) Der Sitz der Stiftung kann geändert werden, wenn dies zur Anpassung an die tatsächlichen Verhältnisse (§ 9 Abs. 2) erforderlich ist.

(3) Eine Änderung des Stiftungszweckes und des für den Stiftungsgenuß in Betracht kommenden Personenkreises darf nur dann erfolgen, wenn ohne eine solche Änderung die Stiftung ihre Aufgaben im Sinne der Stiftungssatzung nicht oder nur unter geänderten

Bedingungen erfüllen kann oder der Stiftungszweck nicht mehr gemeinnützig oder mildtätig wäre.

(4) Das satzungsmäßig bestimmte Stammvermögen der Stiftung darf nur dann geändert werden, wenn sein Wert hiedurch nicht gemindert wird und die Erfüllung des Stiftungszweckes gewährleistet bleibt.

(5) Die satzungsmäßigen Bestimmungen über die Stiftungsorgane können geändert werden, wenn die in der Satzung angeführten Stiftungsorgane nicht mehr bestehen, ihre Befugnisse nicht mehr ausüben oder die vorgeschlagene Änderung in der Verwaltung für die Stiftung zweckentsprechender ist.

Umwandlung von Stiftungen in Stiftungsfonds

§ 19. (1) Stiftungen sind in Stiftungsfonds umzuwandeln, wenn ihre Erträgnisse zur dauernden Erfüllung des Stiftungszweckes nicht mehr ausreichen, auch wenn die Stiftungssatzung geändert würde (§ 18 Abs. 3 und 4), aber durch die Verwendung des Stammvermögens der Stiftung die Erfüllung des Stiftungszweckes voraussichtlich durch

mindestens zwanzig Jahre gewährleistet ist, sofern dem Stifterwillen nichts anderes entspricht.

(2) Die Umwandlung einer Stiftung in einen Stiftungsfonds hat durch Änderung der Stiftungssatzung zu erfolgen. Auf diese Satzungsänderung ist § 17 sinngemäß anzuwenden.

(3) Auf einen Stiftungsfonds finden die Bestimmungen des III. Abschnittes über Fonds sinngemäß Anwendung.

Auflösung von Stiftungen

§ 20. (1) Stiftungen sind aufzulösen, wenn

1. ein Stiftungsvermögen nicht mehr vorhanden ist,

2. das Stiftungsvermögen zur dauernden Erfüllung des Stiftungszweckes nicht hinreicht und auch die Voraussetzungen für eine Umwandlung in einen Stiftungsfonds nicht vorliegen, der Stiftungszweck aber durch eine Auflösung der Stiftung und Übertragung des Stiftungsvermögens an eine andere Stiftung, die einen im wesentlichen gleichartigen Zweck verfolgt, erreicht werden kann, oder

3. der Stiftungszweck nicht mehr gemeinnützig, mildtätig oder seine Erfüllung unmöglich geworden und auch eine Satzungsänderung nach § 18 Abs. 3 nicht möglich ist.

(2) Die Auflösung der Stiftung hat durch die Stiftungsbehörde auf Antrag der zur Vertretung der Stiftung berufenen Organe oder von Amts wegen zu erfolgen. Im Verfahren zur Auflösung der Stiftung kommen dem Stifter, dem Stiftungskurator, den Vertretungsorganen der Stiftung und der Finanzprokuratur Parteistellung zu.

Verfügungen über das Stiftungsvermögen bei Auflösung von Stiftungen

§ 21. (1) Im Auflösungsbescheid ist auch zu verfügen, wem das zur Zeit der Auflösung noch vorhandene Stiftungsvermögen zu übertragen ist.

(2) Das Stiftungsvermögen ist mit deren Zustimmung den physischen oder juristischen Personen, denen nach der Stiftungssatzung im Falle der Auflösung der Stiftung das Vermögen zufällt, oder, falls dies nicht möglich ist, einer anderen Stiftung mit einem ähnlichen Stiftungszweck zu übertragen. Ist auch dies nicht möglich, so ist das Stiftungsvermögen einem dem Stifterwillen möglichst nahekommenden gemeinnützigen oder mildtätigen Zweck zuzuführen.

(3) Mit dem Eintritt der Rechtskraft des Auflösungsbescheides erlischt die Rechtspersönlichkeit der Stiftung. Gleichzeitig geht das bei Auflösung der Stiftung noch vorhandene Stiftungsvermögen in das Eigentum der Person über, die in dem Auflösungsbescheid als Erwerber des Stiftungsvermögens bestimmt ist. Der Auflösungsbescheid ist eine öffentliche Urkunde im Sinne des § 33 des Allgemeinen

Grundbuchgesetzes 1955. Die Stiftungsbehörde hat die Auflösung der Stiftung im "Amtsblatt zur Wiener Zeitung" zu verlautbaren. Die Kosten der Verlautbarung hat der Erwerber des Stiftungsvermögens zu tragen. Hat die Stiftung im Zeitpunkt ihrer Auflösung kein Vermögen, so sind die Kosten der Verlautbarung vom Bund zu tragen.

III. ABSCHNITT

Fonds

Begriff des Fonds

§ 22. Fonds im Sinne dieses Bundesgesetzes sind durch eine Anordnung des Fondsgründers nicht auf Dauer gewidmete Vermögen mit Rechtspersönlichkeit, die der Erfüllung gemeinnütziger oder mildtätiger Zwecke (§ 2 Abs. 2 und 3) dienen.

Voraussetzungen für die Errichtung eines Fonds

§ 23. Zur Errichtung eines Fonds sind die Erklärung des Fondsgründers, durch Zweckwidmung eines bestimmten Vermögens einen Fonds errichten zu wollen, sowie die behördliche Entscheidung, daß die in dieser Erklärung vorgesehene Errichtung des Fonds zulässig ist, erforderlich.

Erklärung des Fondsgründers

§ 24. (1) Die Erklärung des Fondsgründers hat zu enthalten:

1. die Willenserklärung des Fondsgründers, ein bestimmtes Vermögen für die Errichtung eines Fonds zu widmen,

2. die Angabe des für den Fondszweck gewidmeten Vermögens,

3. die Angabe des gemeinnützigen oder mildtätigen Zweckes des Fonds.

(2) Die Erklärung des Fondsgründers muß schriftlich abgefaßt sein und kann überdies einen Vorschlag für die Bestellung des Fondskurators (§ 27 Abs. 2) sowie weitere Angaben im Sinne des § 28 Abs. 2 enthalten, die in die Satzung des Fonds aufzunehmen sind.

(3) Soll der Fonds zu Lebzeiten des Fondsgründers errichtet werden, so muß die Erklärung des Fondsgründers unwiderruflich gegenüber der Fondsbehörde (§ 39) abgegeben werden und mit der gerichtlich oder notariell beglaubigten Unterschrift des Fondsgründers versehen sein.

(4) Bei Fonds von Todes wegen bedarf die Erklärung des Fondsgründers der Form einer letztwilligen Anordnung.

Zulässigkeit der Errichtung eines Fonds

§ 25. (1) Die Errichtung eines Fonds ist zulässig, wenn

1. die Erklärung des Fondsgründers dem § 24 entspricht,

2. der Fondszweck gemeinnützig oder mildtätig und

3. das Fondsvermögen zur Erfüllung des Fondszweckes hinreichend ist.

(2) Das Fondsvermögen ist dann hinreichend, wenn das gewidmete Vermögen im Zeitpunkt der Fondsgründung die Erfüllung des Fondszweckes erwarten läßt.

Entscheidung über die Zulässigkeit

§ 26. (1) Bei Fonds unter Lebenden hat der Fondsgründer die Erklärung der Fondsgründung der Fondsbehörde vorzulegen. Bei Fonds von Todes wegen hat das Verlassenschaftsgericht von der letztwilligen Anordnung die Finanzprokuratur zu verständigen. Dieser obliegt die Abgabe der Erbserklärung oder die Erklärung über die Annahme des Vermächtnisses zugunsten des letztwillig bedachten Fonds sowie die

Vertretung des Fonds bis zur Bestellung des Fondskurators (§ 27).

(2) Über die Zulässigkeit der Errichtung eines Fonds entscheidet die Fondsbehörde.

(3) Im Verfahren über die Zulässigkeit der Errichtung eines Fonds kommen bei Fonds unter Lebenden dem Fondsgründer und der Finanzprokuratur, bei Fonds von Todes wegen der Finanzprokuratur und den Erben des Fondsgründers sowie dem Testamentsvollstrecker Parteistellung zu.

(4) Mit der Entscheidung, daß die Errichtung des Fonds zulässig ist, erlangt dieser Rechtspersönlichkeit. Die Fondsbehörde hat die Errichtung eines Fonds im "Amtsblatt zur Wiener Zeitung" zu verlautbaren. Die Verlautbarung hat den Namen, Sitz und den Zweck des Fonds zu enthalten. Die Kosten der Verlautbarung hat der Fonds zu tragen.

Fondskurator

§ 27. (1) Für Fonds, die als zulässig erklärt wurden, hat die Fondsbehörde einen Fondskurator zu bestellen. Die Bestellung bedarf seines Einverständnisses.

(2) Zum Fondskurator ist die in der Erklärung des Fondsgründers vorgeschlagene Person zu bestellen. Wird in der Erklärung des Fondsgründers kein Fondskurator vorgeschlagen, so ist der Fondskurator aus dem Kreis der allenfalls namhaft gemachten

Verwaltungsorgane unter Bedachtnahme auf deren Reihenfolge zu bestellen.

(3) Lehnen die im Abs. 2 genannten Personen die Bestellung zum Fondskurator ab oder sind in der Erklärung des Fondsgründers keine Personen namhaft gemacht, die für die Bestellung zum Fondskurator in Betracht kommen, so kann auch eine andere Person zum Fondskurator bestellt werden, die zur Vertretung des Fonds geeignet ist.

(4) Dem Fondskurator obliegen nachstehende Aufgaben:

1. die Verwaltung des Fondsvermögens und die Vertretung des Fonds, sofern diese nicht der Finanzprokuratur obliegt;

2. die Vorlage der Fondssatzung (§ 28 Abs. 1);

3. die Erstellung der für die erstmalige Bestellung der Verwaltungs- und Vertretungsorgane des Fonds erforderlichen Vorschläge (§ 29 Abs. 1).

(5) Kommt ein Fondskurator seinen Aufgaben nicht gehörig oder nicht fristgerecht nach, so ist er von der Fondsbehörde abzuberufen und durch einen anderen Fondskurator zu ersetzen.

(6) Der Fondskurator hat gegenüber dem Fonds Anspruch auf eine angemessene Entschädigung.

Fondssatzung

§ 28. (1) Der Fondskurator hat binnen sechs Monaten ab seiner Bestellung die Fondssatzung der Fondsbehörde in dreifacher Ausfertigung vorzulegen.

(2) Die Fondssatzung hat zu enthalten:

1. den Namen und den Sitz des Fonds,

2. Angaben über das Fondsvermögen,

3. Angaben über den Zweck des Fonds, die Verwendung des Vermögens, den durch den Fonds begünstigten Personenkreis sowie die Vorgangsweise bei der Zuerkennung des Fondsgenusses,

4. die Bezeichnung der Verwaltungs- und Vertretungsorgane des Fonds (Fondsorgane) sowie Bestimmungen über ihre Bestellung und Abberufung,

5. die Erfordernisse gültiger Beschlußfassungen, wenn das Verwaltungs- oder Vertretungsorgan des Fonds aus mehr als einer Person besteht, und der Bekanntmachungen,

6. Bestimmungen über die Befugnisse sowie über die allfällige Zuerkennung von Entschädigungen an die Verwaltungs- und Vertretungsorgane des Fonds,

7. Bestimmungen über die jährliche Rechnungslegung an die Fondsbehörde hinsichtlich des Vermögens des Fonds sowie über Rechtsgeschäfte, die nach diesem Bundesgesetz zu ihrer Rechtswirksamkeit der Genehmigung der Fondsbehörde bedürfen,

8. Bestimmungen über die Auflösung des Fonds und die Zuwendung des bei einer Auflösung des Fonds noch vorhandenen Vermögens (§ 38 Abs. 1 und 2).

(3) Hinsichtlich des Namens, des Sitzes und der Verwaltung des Fonds finden die Bestimmungen der §§ 8, 9 und 10 Abs. 3 sinngemäß Anwendung.

(4) Die Fondssatzung bedarf der Genehmigung der Fondsbehörde. Im Genehmigungsverfahren kommen dem Fondsgründer, dem Fondskurator und der Finanzprokuratur Parteistellung zu. Die Genehmigung darf nur dann versagt werden, wenn die Fondssatzung den gesetzlichen Bestimmungen nicht entspricht oder mit der als zulässig festgestellten Erklärung des Fondsgründers in Widerspruch steht. Ein solcher Widerspruch liegt jedoch nicht vor, wenn die Fondssatzung von der Erklärung des Fondsgründers Abweichungen enthält, die insbesondere bei letztwillig verfügten Fonds dem vermutlichen Willen des Fondsgründers entsprechen und für unbedingt zweckmäßig zu erachten sind.

(5) Wird die Genehmigung versagt, so hat der Fondskurator binnen drei Monaten nach Eintritt der Rechtskraft dieses Bescheides eine entsprechend geänderte Fondssatzung vorzulegen.

(6) Auf der Fondssatzung ist die erfolgte Genehmigung zu beurkunden und diese Ausfertigung dem Fondskurator auszuhändigen.

(7) Der Fonds darf erst mit Genehmigung der Fondssatzung seine Tätigkeit aufnehmen.

Erstmalige Bestellung der Fondsorgane

§ 29. (1) Gleichzeitig mit der Fondssatzung hat der Fondskurator der Fondsbehörde unter Bedachtnahme auf die in der Erklärung des Fondsgründers angeführten Personen die vorgesehenen Verwaltungs- und Vertretungsorgane des Fonds namentlich vorzuschlagen. Diese müssen mit ihrer Bestellung einverstanden sowie - sofern sie natürliche Personen sind - eigenberechtigt und vertrauenswürdig sein.

(2) Die erstmalige Bestellung der Fondsorgane obliegt der Fondsbehörde. Diese hat die vorgeschlagenen Personen zu bestellen, wenn sie die Voraussetzungen des Abs. 1 erfüllen. Andernfalls ist dem Fondskurator aufzutragen, binnen drei Monaten andere geeignete Personen vorzuschlagen.

(3) Mit der Bestellung der Fondsorgane endet die Tätigkeit des Fondskurators. Gleichzeitig gehen die Verwaltung und die Vertretung des Fonds auf die Fondsorgane über.

Zuständigkeit der Gerichte in Fondssachen

§ 30. Ansprüche des Fonds auf Grund der Erklärung des Fondsgründers sowie Ansprüche gegen den Fonds auf Grund der Erklärung des Fondsgründers oder der Fondssatzung sind gleich anderen privatrechtlichen Ansprüchen gegen den Fonds im Rechtswege geltend zu machen.

Staatliche Aufsicht über Fonds

§ 31. (1) Die Fonds unterliegen nach Maßgabe dieses Bundesgesetzes der Aufsicht der Fondsbehörde. Diese hat die ordnungsgemäße

Verwaltung und Verwendung des Fondsvermögens sowie die Erfüllung des Fondszweckes sicherzustellen.

(2) Organe der Aufsichtsbehörde, die mit der staatlichen Aufsicht über einen Fonds betraut sind, dürfen nicht zum Verwalter oder Mitglied eines Verwaltungsorgans dieses Fonds bestellt werden.

Aufsicht über das Fondsvermögen

§ 32. (1) Das Fondsvermögen ist dem Zweck des Fonds entsprechend anzulegen. Die Anlage des Fondsvermögens ist der Fondsbehörde nachzuweisen.

(2) Rechtsgeschäfte über die Belastung oder Veräußerung von unbeweglichem Fondsvermögen bedürfen zu ihrer Rechtswirksamkeit der Genehmigung der Fondsbehörde. Die Genehmigung ist nur dann zu erteilen, wenn durch das Rechtsgeschäft die Erfüllung des Fondszweckes weiterhin gewährleistet ist.

(3) Bezüglich der Rechnungslegung finden die Bestimmungen des § 14 Abs. 3 sinngemäß Anwendung.

(4) Den Organen der Fondsbehörde ist jederzeit die Einschau in die Vermögensgebarung und in die Vermögensverwaltung des Fonds zu gewähren.

Bestimmungen über die Fondsorgane

§ 33. (1) Die Fondsorgane müssen mit ihrer Bestellung einverstanden sein sowie - sofern sie natürliche Personen sind – eigenberechtigt und vertrauenswürdig sein.

(2) Die Fondsorgane haben Anspruch auf Entschädigung für ihre Tätigkeit aus dem Fondsvermögen, soweit die Entschädigung in der Fondssatzung ausdrücklich vorgesehen und der Tätigkeit des Fondsorgans angemessen ist. Sonst ist die Tätigkeit der Fondsorgane ehrenamtlich; sie haben nur Anspruch auf Ersatz der notwendigen

Barauslagen.

(3) Über die Entschädigung entscheidet die Fondsbehörde.

(4) Jede Bestellung oder Abberufung von Fondsorganen ist der Fondsbehörde binnen vierzehn Tagen unter Angabe des Namens und der Adresse des Fondsorgans bekanntzugeben.

(5) Die Fondsbehörde hat Fondsorgane, die ihren nach diesem Bundesgesetz oder auf Grund der Fondssatzung obliegenden Verpflichtungen gegenüber dem Fonds nicht oder nicht ordnungsgemäß nachkommen, die Erfüllung dieser Verpflichtungen unter Setzung einer vier Wochen nicht übersteigenden Frist aufzutragen.

(6) Die Fondsbehörde hat die Fondsorgane, die nicht die Voraussetzungen des § 29 Abs. 1 zweiter Satz erfüllen oder einem Auftrag nach Abs. 5 nicht entsprechen, abzuberufen.

Bestellung eines Fondskommissärs

§ 34. (1) Die Fondsbehörde hat für einen Fonds einen Fondskommissär zu bestellen, wenn

1. die bestellten Verwaltungs- und Vertretungsorgane des Fonds in der zur Beschlußfassung notwendigen Anzahl ihre Tätigkeit nicht mehr ausüben können,

2. die Erfüllung des Fondszweckes durch pflichtwidriges Verhalten eines oder mehrerer zondsorgane gefährdet ist.

(2) Mit der Bestellung des Fondskommissärs gehen die Vertretungs- und Verwaltungsbefugnisse der Fondsorgane auf diesen über. Sofern die Fondssatzung nichts anderes bestimmt, hat der Fondskommissär binnen acht Wochen nach seiner Bestellung der Fondsbehörde einen Vorschlag für eine Neubestellung der satzungsmäßig vorgesehenen Fondsorgane zu unterbreiten, die Fondsbehörde hat die Fondsorgane zu bestellen; hiebei ist der § 29 sinngemäß anzuwenden.

(3) Der Fondskommissär hat gegenüber dem Fonds Anspruch auf eine angemessene Entschädigung.

(4) Die Fondsbehörde kann den Fondskommissär abberufen und einen neuen Fondskommissär bestellen.

Änderung der Fondssatzung

§ 35. (1) Die Änderung der Fondssatzung kann durch Beschluß der Fondsorgane erfolgen, wenn die Voraussetzungen für die Satzungsänderung nach § 36 vorliegen. Dieser Beschluß bedarf der Genehmigung der Fondsbehörde.

(2) Die Fondsbehörde hat den Fondsorganen die Änderung der Fondssatzung aufzutragen, soweit dies zur Verwirklichung des Fondszweckes erforderlich ist. Kommen die Fondsorgane dieser

Aufforderung nicht innerhalb von acht Wochen nach, so hat die

Fondsbehörde die Fondssatzung entsprechend zu ändern.

(3) Die geänderte Fondssatzung ist mit dem Antrag auf Genehmigung der Satzungsänderung der Fondsbehörde in dreifacher Ausfertigung vorzulegen. Diese hat die erfolgte Genehmigung auf der geänderten Fondssatzung zu beurkunden und eine Ausfertigung dem Vertretungsorgan des Fonds auszuhändigen.

(4) Die Fondsbehörde hat die Änderung der Fondssatzung im "Amtsblatt zur Wiener Zeitung" zu verlautbaren, wenn hiedurch der Name, der Sitz oder der Fondszweck geändert wurde. Die Kosten der Verlautbarung hat der Fonds zu tragen.

Besondere Voraussetzungen für die Satzungsänderung

§ 36. (1) Der Name eines Fonds darf nur dann geändert werden, wenn sich der Personenname, der Fondszweck oder das satzungsmäßig bestimmte Vermögen des Fonds, die dem Fondsnamen zugrunde liegen, geändert haben.

(2) Der Sitz des Fonds kann geändert werden, wenn dies zur Anpassung an die tatsächlichen Verhältnisse erforderlich ist.

(3) Eine Änderung des Fondszweckes und des für den Fondsgenuß in Betracht kommenden Personenkreises darf nur dann erfolgen, wenn ohne eine solche Änderung der Fonds seine Aufgaben im Sinne der Fondssatzung nicht oder nur unter geänderten Bedingungen erfüllen kann oder der Fondszweck nicht mehr gemeinnützig oder mildtätig wäre.

(4) Die satzungsmäßigen Bestimmungen über die Fondsorgane können geändert werden, wenn die in der Satzung angeführten Fondsorgane nicht mehr bestehen, ihre Befugnisse nicht mehr ausüben oder die vorgeschlagene Änderung in der Verwaltung für den Fonds zweckentsprechend ist.

Auflösung des Fonds

§ 37. (1) Fonds sind aufzulösen, wenn

1. ein Fondsvermögen nicht mehr vorhanden ist,

2. das Fondsvermögen zur Erfüllung des Fondszweckes nicht hinreicht oder

3. der Fondszweck nicht mehr gemeinnützig, mildtätig oder seine Erfüllung unmöglich geworden ist.

(2) Die Auflösung des Fonds hat durch die Fondsbehörde auf Antrag der zur Vertretung des Fonds berufenen Organe oder von Amts wegen zu erfolgen. Im Verfahren zur Auflösung des Fonds kommen dem Fondsgründer, dem Fondskurator, den Vertretungsorganen des Fonds und der Finanzprokuratur Parteistellung zu.

Verfügungen über das Fondsvermögen bei Auflösung des Fonds

§ 38. (1) Im Auflösungsbescheid ist auch zu verfügen, wem das zur Zeit der Auflösung noch vorhandene Fondsvermögen zu übertragen ist.

(2) Das Fondsvermögen ist mit deren Zustimmung den physischen oder juristischen Personen, denen nach der Fondssatzung im Falle der Auflösung des Fonds das Vermögen zufällt, oder, falls dies nicht möglich ist, einem anderen Fonds mit einem ähnlichen Fondszweck zu übertragen. Ist auch dies nicht möglich, so ist das Fondsvermögen einem der Fondswidmung möglichst nahekommenden gemeinnützigen oder mildtätigen Zweck zuzuführen.

(3) Mit dem Eintritt der Rechtskraft des Auflösungsbescheides erlischt die Rechtspersönlichkeit des Fonds. Gleichzeitig geht das bei Auflösung des Fonds noch vorhandene Fondsvermögen in das Eigentum der Person über, die in dem Auflösungsbescheid als Erwerber des Fondsvermögens bestimmt ist. Der Auflösungsbescheid ist eine öffentliche Urkunde im Sinne des § 33 des Allgemeinen

Grundbuchgesetzes 1955. Die Fondsbehörde hat die Auflösung des Fonds im "Amtsblatt zur Wiener Zeitung" zu verlautbaren. Die Kosten der Verlautbarung hat der Erwerber des Fondsvermögens zu tragen. Hat der Fonds im Zeitpunkt der Auflösung kein Vermögen, so sind die Kosten der Verlautbarung vom Bund zu tragen.

IV. ABSCHNITT

Zuständige Behörden

§ 39. (1) Stiftungsbehörde und Fondsbehörde erster Instanz ist, soweit im Abs. 2 nicht anderes bestimmt wird, der Landeshauptmann. Seine örtliche Zuständigkeit richtet sich nach dem Sitz bzw. voraussichtlichen Sitz der Stiftung oder des Fonds.

(2) Für Stiftungen und Fonds, die nach ihren Satzungen von einem Bundesministerium zu verwalten sind, obliegen die Aufgaben der Stiftungs- und Fondsbehörde dem nach dem Stiftungs- und Fondszweck zuständigen Bundesminister. Das gleiche gilt für Stiftungen und Fonds, die nach ihren Satzungen von Personen (Personengemeinschaften)

zu verwalten sind, die hiezu vom Bundespräsidenten, von der Bundesregierung oder von einem Bundesminister bestellt werden.

(3) Über Berufungen gegen Entscheidungen des Landeshauptmannes in Stiftungs- und Fondsangelegenheiten entscheidet für Stiftungen und Fonds, die für Schul-, Unterrichts-, Kultus-, Sport-, Volksbildungs-, Kunst-, Stipendien-, Hochschul-, Wissenschafts-, Forschungs-, Gesundheits- oder Umweltschutzzwecke bestimmt sind oder der

Unterstützung von aktiven oder ehemaligen Militärpersonen einschließlich ihrer Angehörigen dienen, der mit diesen Verwaltungsaufgaben betraute Bundesminister, für alle übrigen Stiftungen und Fonds der Bundesminister für Inneres.

V. ABSCHNITT

Register über Stiftungen und Fonds

§ 40. (1) Das Bundesministerium für Inneres hat für alle Stiftungen und Fonds, die den Bestimmungen dieses Bundesgesetzes unterliegen, je ein Register zu führen und auf Ansuchen Auskünfte über die im Register enthaltenen Angaben zu erteilen. In das Register kann jedermann Einsicht nehmen und Abschriften und Auszüge von den

Eintragungen verlangen.

(2) Das Register hat den Namen sowie den Sitz und die Adresse der Stiftung (des Fonds), Angaben über den Zweck der Stiftung (des Fonds), den begünstigten Personenkreis und die Namen und Adressen der Vertretungsorgane der Stiftung (des Fonds), allfällige Änderungen der Stiftungssatzung (der Fondssatzung) sowie die Umwandlung oder die Auflösung der Stiftung (des Fonds) zu enthalten.

(3) In das Register sind unter einer laufenden Nummer jeweils das Datum und die Geschäftszahl des Bescheides einzutragen, mit dem die im Abs. 2 angeführten Verfügungen der Stiftungs- oder Fondsbehörde erfolgten. Bei einer Eintragung, die durch eine spätere Eintragung ihre Bedeutung verloren hat, ist dies deutlich erkennbar zu machen. In Auszüge (Abschriften) aus dem Register werden solche Eintragungen

nur aufgenommen, soweit dies beantragt oder nach den Umständen erforderlich ist.

(4) Im Register darf nichts radiert oder unleserlich gemacht werden. Schreibfehler oder andere offenbare Unrichtigkeiten bei einer Eintragung sind zu berichtigen. Berichtigungsvermerke sind unter Angabe des Tages der Berichtigung vom Registerführer zu unterschreiben.

(5) Das Register ist dauernd aufzubewahren.

(6) Die für Stiftungen und Fonds gemäß § 39 Abs. 1 und 2 zuständigen Stiftungs(Fonds)behörden haben alle Angaben, die in das Register aufzunehmen sind, dem Bundesministerium für Inneres mitzuteilen. Von der erfolgten Eintragung in das Register sind die Stiftungs(Fonds)behörden und die Stiftungs(Fonds)organe zu verständigen.

VI. ABSCHNITT

Übergangs- und Schlußbestimmungen

§ 41. (1) Stiftungen oder Fonds mit eigener Rechtspersönlichkeit, die den Voraussetzungen des § 1 Abs. 1 entsprechen und vor Inkrafttreten dieses Bundesgesetzes errichtet wurden, gelten als Stiftungen oder Fonds im Sinne dieses Bundesgesetzes. Im übrigen finden auf diese Stiftungen und Fonds die einschlägigen Bestimmungen der Abschnitte II bis V dieses Bundesgesetzes Anwendung.

(2) Auf bestehende Stiftungen oder Fonds, die kirchlichen Zwecken dienen und von Organen einer gesetzlich anerkannten Kirche oder Religionsgesellschaft verwaltet werden, sind die Bestimmungen dieses Bundesgesetzes nicht anzuwenden. Ob es sich um solche Stiftungen oder Fonds handelt, ist auf Antrag der zuständigen kirchlichen Oberbehörde oder des Verwaltungsorgans dieser Stiftung oder dieses Fonds vom

Bundesminister für Unterricht und Kunst mit Bescheid festzustellen.

(3) Satzungen der im Abs. 1 angeführten Stiftungen und Fonds sind hinsichtlich ihrer Namensführung, Zweckbestimmung oder Organisation von Amts wegen zu ändern, wenn es zur Anpassung der Satzung an die Bestimmungen dieses Bundesgesetzes erforderlich ist und die zur Verwaltung der Stiftung (des Fonds) zuständigen Organe nicht binnen

sechs Monaten nach Inkrafttreten dieses Bundesgesetzes die zur Anpassung erforderliche Abänderung beantragen.

(4) Für die im Abs. 1 angeführten Stiftungen und Fonds haben die Stiftungs- und Fondsbehörden alle Angaben, die gemäß § 40 Abs. 2 in das Register über Stiftungen und Fonds aufzunehmen sind, binnen sechs Monaten nach Inkrafttreten dieses Bundesgesetzes dem Bundesministerium für Inneres mitzuteilen.

Aufhebung von Rechtsvorschriften

§ 42. (1) Mit dem Inkrafttreten dieses Bundesgesetzes treten außer Kraft:

1. das Hofkanzleidekret vom 21. Mai 1841, politische Gesetzessammlung, Band 69, Nr. 60;

2. Art. 23 und 24 des Verwaltungs-Entlastungsgesetzes, BGBl.Nr. 277/1925;

3. das Stiftungs- und Fondsreorganisationsgesetz, BGBl.Nr. 197/1954, mit Ausnahme der Bestimmungen über dieGeltendmachung und Durchsetzung von Rückstellungsansprüchen und

4. die Ministerialverordnung vom 24. Jänner 1866, RGBl. Nr. 17, in der Fassung der Verordnung vom 25. Juli 1913, RGBl. Nr. 156, betreffend die Genehmigung des Kaisers zur Veräußerung unbeweglichen Vermögens des Souveränen Malteser-Ritter-Ordens.

Vollzugsklausel

§ 43. Mit der Vollziehung dieses Bundesgesetzes sind betraut:

1. hinsichtlich der im § 39 Abs. 2 angeführten Stiftungen und Fonds der nach dem Stiftungs- und Fondszweck zuständige Bundesminister;

2. hinsichtlich der übrigen Stiftungen und Fonds

a) wenn es sich um Stiftungen oder Fonds für Schul-, Unterrichts-, Kultus-, Sport-, Volksbildungs- und Kunstzwecke sowie um Stipendienstiftungen handelt, soweit sie nicht unter lit. b fallen, der Bundesminister für Unterricht und Kunst;

b) für Stiftungen und Fonds, die Hochschul-, Wissenschafts- oder Forschungszwecken dienen, sowie Stipendienstiftungen zugunsten von Hochschülern der Bundesminister für Wissenschaft und Forschung;

c) für Stiftungen und Fonds für Zwecke des Gesundheitswesens und des Sports der Bundesminister für Gesundheit, Sport und Konsumentenschutz;

d) für Militärstiftungen und Militärfonds der Bundesminister für Landesverteidigung;

e) für Stiftungen und Fonds für Zwecke des Umweltschutzes der Bundesminister für Umwelt, Jugend und Familie und

3. für alle übrigen Stiftungen und Fonds und hinsichtlich des § 40 für alle Stiftungen und Fonds der Bundesminister für Inneres.

Inkrafttreten

§ 44. (1) Dieses Bundesgesetz tritt mit 1. Jänner 1975 in Kraft.

(2) § 43 Z 2 lit. c bis e und § 43 Z 3 in der Fassung des Bundesgesetzes BGBl. Nr. 256/1993 treten mit 1. Juli 1993 in Kraft.

4.3. Law on NPO

There is no law in Austria defining NPOs, but the definition of NPOs by the "Österreichisches Spendengütesiegel" (ÖSGS), the Austrian Seal of Approval Institute[325].

Non Profit Organisationen, NPOs, sind formal durch 5 Kriterien gekennzeichnet

- Mindestmaß an formaler Organisation samt Rechtsform im Unterschied zu spontanen Initiativen, die lediglich temporär und Anlass bezogen in Erscheinung treten

- Private, also nicht-staatliche Organisationen, eine Finanzierung durch die öffentliche Hand ist damit nicht ausgeschlossen

- Erwirtschaftete Überschüsse verbleiben in der Organisation und werden für den Organisationszweck verwendet, es erfolgt keine Ausschüttung von Überschüssen an Mitglieder oder Eigentümer

- Minimum an Selbstverwaltung und Entscheidungsautonomie, d.h. keine völlige Außenkontrolle im juristischen Sinn

[325] http://www.iogv.at/startset.html 28 February 2005.

- Mindestmaß an Freiwilligkeit, bezogen auf ausführende Tätigkeiten, aber auch bezogen auf Funktionärstätigkeit sowie freiwillige Zuwendungen in Form von Geld- und Sachspende

Eine klare Abgrenzung der angeführten Kriterien wird in der Praxis nie vollständig gelingen, was die demokratiepolitisch gesunde Vielfalt und Buntheit des NPO-Bereichs widerspiegelt.

4.4. Law on NGO

There is no special law on NGO in Austria.

4.5. Law on other legal forms

There is no special law on other legal forms in Austria.

4.6. Other laws

4.6.1. Law on the Commercial Register

"Firmenbuchgesetz (FBG)"[326]

§ 3.

Bei allen Rechtsträgern sind einzutragen:

- die Firmenbuchnummer
- die Firma
- die Rechtsform
- der Sitz und die für Zustellungen maßgebliche Geschäftsanschrift falls die Bezeichnung des Sitzes nicht mit dem Namen der politischen Gemeine übereinstimmt, ist außerdem die politische Gemeinde, in der der Sitz liegt, anzugeben eine kurze Bezeichnung des Geschäftszweigs nach eigener Angabe
- Zweigniederlassungen mit ihrem Ort, der für Zustellungen maßgeblichen Geschäftsanschrift und ihrer Firma, wenn sie von der Firma der Hauptniederlassung abweicht
- der Tag der Feststellung der Satzung bzw. des Abschlusses des Gesellschaftsvertrags
- Name und Geburtsdatum des Einzelkaufmanns, bei anderen Rechtsträgern ihrer vertretungsbefugten Personen sowie der Beginn und die Art ihrer Vertretungsbefugnis
- bei Prokuristen deren Namen und Geburtsdatum sowie der Beginn und die Art ihrer Vertretungsbefugnis
- Vereinbarungen nach den §§ 25 Abs. 2 und 28 Abs. 2 HGB
- die Dauer des Unternehmens, wenn sie begrenzt ist
- bei Abwicklung (Liquidation) Name und Geburtsdatum der Abwickler (Liquidatoren) sowie der Beginn und die Art ihrer Vertretungsbefugnis
- die im Exekutions- und Insolvenzrecht zur Eintragung in das Firmenbuch vorgesehenen Verfügungsbeschränkungen, deren Aufhebung und die Namen der gesetzlichen Vertreter
- die Abweisung eines Antrags auf Eröffnung des Konkurses mangels hinreichenden Vermögens
- Vorgänge, durch die ein Betrieb oder Teilbetrieb übertragen wird sowie deren Rechtsgrund die Eintragungen sind sowohl beim Erwerber als auch beim Veräußerer vorzunehmen
- sonstige Eintragungen, die gesetzlich vorgesehen sind

4.6.2. Federal General Fiscal Code

"Bundesabgabenordnung (BAO)" of 28 June 1961[327]

8. Gemeinnützige, mildtätige und kirchliche Zwecke

§ 34

(1) Die Begünstigungen, die bei Betätigung für gemeinnützige, mildtätige oder kirchliche Zwecke auf abgabenrechtlichem Gebiet in einzelnen Abgabenvorschriften gewährt werden, sind an die Voraussetzungen geknüpft, daß die Körperschaft, Personenvereinigung oder Vermögensmasse, der die Begünstigung zukommen soll, nach Gesetz, Satzung, Stiftungsbrief oder ihrer sonstigen Rechtsgrundlage und nach ihrer tatsächlichen Geschäftsführung ausschließlich und unmittelbar der Förderung der genannten Zwecke dient. Auf Verlangen der Abgabenbehörde haben Körperschaften, Personenvereinigungen und Vermögensmassen, die im Inland weder ihren Sitz noch ihre Geschäftsleitung (§ 27) haben, nachzuweisen, daß sie die Voraussetzungen des ersten Satzes erfüllen.

[326] http://www.jusline.at/db_service/firmenbuch/firmenbuch_gesetz/FBG03.html 24 February 2005.

[327] http://www.tews.at/gesetze/steuer/bao.pdf, 28 February 2005.

(2) Die in den §§ 35 bis 47 für Körperschaften getroffenen Anordnungen gelten auch für Personenvereinigungen, Vermögensmassen und für Betriebe gewerblicher Art von Körperschaften des öffentlichen Rechtes.

§ 35

(1) Gemeinnützig sind solche Zwecke, durch deren Erfüllung die Allgemeinheit

gefördert wird.

(2) Eine Förderung der Allgemeinheit liegt nur vor, wenn die Tätigkeit dem Gemeinwohl auf geistigem, kulturellem, sittlichem oder materiellem Gebiet nützt. Dies gilt insbesondere für die Förderung der Kunst und Wissenschaft, der Gesundheitspflege, der Kinder-, Jugend- und Familienfürsorge, der Fürsorge für alte, kranke oder mit körperlichen Gebrechen behaftete Personen, des Körpersports, des Volkswohnungswesens, der Schulbildung, der Erziehung, der Volksbildung, der Berufsausbildung, der Denkmalpflege, des Natur-, Tier- und Höhlenschutzes, der Heimatkunde, der Heimatpflege und der Bekämpfung von Elementarschäden.

§ 36

(1) Ein Personenkreis ist nicht als Allgemeinheit aufzufassen, wenn er durch ein engeres Band, wie Zugehörigkeit zu einer Familie, zu einem Familienverband oder zu einem Verein mit geschlossener Mitgliederzahl, durch Anstellung an einer bestimmten Anstalt und dergleichen fest abgeschlossen ist oder wenn infolge seiner Abgrenzung nach örtlichen, beruflichen oder sonstigen Merkmalen die Zahl der in Betracht kommenden Personen dauernd nur klein sein kann.

(2) Der Umstand, daß die Erträge eines Unternehmens einer Gebietskörperschaft zufließen, bedeutet für sich allein noch keine unmittelbare Förderung der Allgemeinheit.

§ 37

Mildtätig (humanitär, wohltätig) sind solche Zwecke, die darauf gerichtet sind, hilfsbedürftige Personen zu unterstützen.

§ 38

(1) Kirchlich sind solche Zwecke, durch deren Erfüllung gesetzlich anerkannte Kirchen und Religionsgesellschaften gefördert werden.

(2) Zu den kirchlichen Zwecken gehören insbesondere die Errichtung, Erhaltung und Ausschmückung von Gottes(Bet)häusern und kirchlichen Gemeinde(Pfarr)häusern, die Abhaltung des Gottesdienstes, von kirchlichen Andachten und sonstigen religiösen oder seelsorglichen Veranstaltungen, die Ausbildung von Geistlichen und Ordenspersonen, die Erteilung von Religionsunterricht, die Beerdigung und Pflege des Andenkens der Toten in religiöser Hinsicht, ferner die Verwaltung des Kirchenvermögens, die Besoldung der Geistlichen und der kirchlichen Dienstnehmer, die Alters- und Invalidenversorgung dieser Personen und die Versorgung ihrer Witwen und Waisen einschließlich der Schaffung und Führung besonderer Einrichtungen (Heime) für diesen Personenkreis.

§ 39

Ausschließliche Förderung liegt vor, wenn folgende fünf Voraussetzungen zutreffen:

1. Die Körperschaft darf, abgesehen von völlig untergeordneten Nebenzwecken, keine anderen als gemeinnützige, mildtätige oder kirchliche Zwecke verfolgen.

2. Die Körperschaft darf keinen Gewinn erstreben. Die Mitglieder dürfen keine Gewinnanteile und in ihrer Eigenschaft als Mitglieder keine sonstigen Zuwendungen aus Mitteln der Körperschaft erhalten.

3. Die Mitglieder dürfen bei ihrem Ausscheiden oder bei Auflösung oder Aufhebung der Körperschaft nicht mehr als ihre eingezahlten Kapitalanteile und den gemeinen Wert ihrer Sacheinlagen zurückerhalten, der nach dem Zeitpunkt der Leistung der Einlagen zu berechnen ist.

4. Die Körperschaft darf keine Person durch Verwaltungsausgaben, die dem Zweck der Körperschaft fremd sind, oder durch unverhältnismäßig hohe Vergütungen (Vorstandsgehälter oder Aufsichtsratsvergütungen) begünstigen.

5. Bei Auflösung oder Aufhebung der Körperschaft oder bei Wegfall ihres bisherigen Zweckes darf das Vermögen der Körperschaft, soweit es die eingezahlten Kapitalanteile der Mitglieder und den gemeinen Wert der von den Mitgliedern geleisteten Sacheinlagen übersteigt, nur für

gemeinnützige, mildtätige oder kirchliche Zwecke verwendet werden.

§ 40

(1) Unmittelbare Förderung liegt vor, wenn eine Körperschaft den gemeinnützigen, mildtätigen oder kirchlichen Zweck selbst erfüllt. Dies kann auch durch einen Dritten geschehen, wenn dessen Wirken wie eigenes Wirken der Körperschaft anzusehen ist.

(2) Eine Körperschaft, die sich auf die Zusammenfassung, insbesondere Leitung ihrer Unterverbände beschränkt, dient gemeinnützigen, mildtätigen oder kirchlichen Zwecken, wenn alle Unterverbände gemeinnützigen, mildtätigen oder kirchlichen Zwecken dienen.

§ 41

(1) Die Satzung der Körperschaft muß eine ausschließliche und unmittelbare Betätigung für einen gemeinnützigen, mildtätigen oder kirchlichen Zweck ausdrücklich vorsehen und diese Betätigung genau umschreiben; als Satzung im Sinn der §§ 41 bis 43 gilt auch jede andere sonst in Betracht kommende Rechtsgrundlage einer Körperschaft.

(2) Eine ausreichende Bindung der Vermögensverwendung im Sinn des § 39 Z. 5 liegt vor, wenn der Zweck, für den das Vermögen bei Auflösung oder Aufhebung der Körperschaft oder bei Wegfall ihres bisherigen Zweckes zu verwenden ist, in der Satzung (Abs. 1) so genau bestimmt wird, daß auf Grund der Satzung geprüft werden kann, ob der Verwendungszweck als gemeinnützig, mildtätig oder kirchlich anzuerkennen ist.

(3) Wird eine Satzungsbestimmung, die eine Voraussetzung der Abgabenbegünstigung betrifft, nachträglich geändert, ergänzt, eingefügt oder aufgehoben, so hat dies die Körperschaft binnen einem Monat jenem Finanzamt bekanntzugeben, das für die Festsetzung der Umsatzsteuer der Körperschaft zuständig ist oder es im Falle der Umsatzsteuerpflicht der Körperschaft wäre.

§ 42

Die tatsächliche Geschäftsführung einer Körperschaft muß auf ausschließliche und unmittelbare Erfüllung des gemeinnützigen, mildtätigen oder kirchlichen Zweckes eingestellt sein und den Bestimmungen entsprechen, die die Satzung aufstellt.

§ 43

Die Satzung (§ 41) und die tatsächliche Geschäftsführung (§ 42) müssen, um die Voraussetzung für eine abgabenrechtliche Begünstigung zu schaffen, den Erfordernissen dieses Bundesgesetzes bei der Körperschaftsteuer und bei der Gewerbesteuer während des ganzen Veranlagungszeitraumes, bei den übrigen Abgaben im Zeitpunkt der Entstehung der Abgabenschuld entsprechen.

§ 44

(1) Einer Körperschaft, die einen Gewerbebetrieb oder einen land- und forstwirtschaftlichen Betrieb unterhält, kommt eine Begünstigung auf abgabenrechtlichem Gebiet wegen Betätigung für gemeinnützige, mildtätige oder kirchliche Zwecke nicht zu.

(2) Die Finanzlandesdirektion ist ermächtigt, von der Geltendmachung einer Abgabepflicht in den Fällen des Abs. 1 ganz oder teilweise abzusehen, wenn andernfalls die Erreichung des von der Körperschaft verfolgten gemeinnützigen, mildtätigen oder kirchlichen Zweckes vereitelt oder wesentlich gefährdet wäre. Eine solche Bewilligung kann von Bedingungen und Auflagen abhängig gemacht werden, die mit der Erfüllung der gemeinnützigen, mildtätigen oder kirchlichen Zwecke zusammenhängen oder die Erreichung dieser Zwecke zu fördern geeignet sind. Örtlich zuständig ist jene Finanzlandesdirektion, in deren Bereich die Abgabenbehörde erster Instanz gelegen ist, die für die Erhebung der Umsatzsteuer der Körperschaft zuständig ist oder es im Fall der Umsatzsteuerpflicht der Körperschaft wäre.

§ 45

(1) Unterhält eine Körperschaft, die die Voraussetzungen einer Begünstigung auf abgabenrechtlichem Gebiet im übrigen erfüllt, einen wirtschaftlichen Geschäftsbetrieb (§ 31), so ist sie nur hinsichtlich dieses Betriebes abgabepflichtig, wenn er sich als Mittel zur Erreichung der gemeinnützigen, mildtätigen oder kirchlichen Zwecke darstellt. Diese Voraussetzung ist gegeben, wenn durch den wirtschaftlichen Geschäftsbetrieb eine Abweichung von den im Gesetz, in der Satzung, im Stiftungsbrief oder in der sonstigen Rechtsgrundlage der Körperschaft

festgelegten Zwecken nicht eintritt und die durch den wirtschaftlichen Geschäftsbetrieb erzielten Überschüsse der Körperschaft zur Förderung ihrer gemeinnützigen, mildtätigen oder kirchlichen Zwecke dienen. Dem wirtschaftlichen Geschäftsbetrieb zugehöriges Vermögen gilt je nach der Art des Betriebes als Betriebsvermögen oder als land- und forstwirtschaftliches Vermögen, aus dem wirtschaftlichen Geschäftsbetrieb erzielte Einkünfte sind wie Einkünfte aus einem gleichartigen in Gewinnabsicht geführten Betrieb zu behandeln.

(2) Die Abgabepflicht hinsichtlich des wirtschaftlichen Geschäftsbetriebes entfällt, wenn dieser sich als ein zur Erreichung des begünstigten Zweckes unentbehrlicher Hilfsbetrieb darstellt. Dies trifft zu, wenn die folgenden drei Voraussetzungen erfüllt sind:

a) Der wirtschaftliche Geschäftsbetrieb muß in seiner Gesamtrichtung auf Erfüllung der gemeinnützigen, mildtätigen oder kirchlichen Zwecke eingestellt sein.

b) Die genannten Zwecke dürfen nicht anders als durch den wirtschaftlichen Geschäftsbetrieb erreichbar sein.

c) Der wirtschaftliche Geschäftsbetrieb darf zu abgabepflichtigen Betrieben derselben oder ähnlicher Art nicht in größerem Umfang in Wettbewerb treten, als dies bei Erfüllung der Zwecke unvermeidbar ist.

(3) Unterhält eine Körperschaft einen wirtschaftlichen Geschäftsbetrieb, auf den weder die Voraussetzungen des Abs. 1 noch jene des Abs. 2 zutreffen, so findet § 44 Anwendung.

§ 45a

Übersteigen Umsätze gemäß § 1 Abs. 1 Z 1 und 2 des Umsatzsteuergesetzes 1994, die von einer Körperschaft im Rahmen von land- und forstwirtschaftlichen Betrieben, Gewerbebetrieben und wirtschaftlichen Geschäftsbetrieben gemäß § 45 Abs. 3 ausgeführt werden, im Veranlagungszeitraum insgesamt nicht den Betrag von 40 000 Euro, so gilt unbeschadet der Ermächtigung des § 44 Abs. 2 eine Bewilligung im Sinne der letztgenannten Bestimmung insoweit als erteilt, als die Abgabepflicht hinsichtlich dieser Betriebe zwar bestehen bleibt, die Begünstigungen der Körperschaft auf abgabenrechtlichem Gebiet jedoch nicht berührt werden. Voraussetzung dafür ist, daß erzielte Überschüsse dieser Betriebe zur Förderung gemeinnütziger, mildtätiger oder kirchlicher Zwecke der Körperschaft dienen.

§ 46

Betreibt eine Körperschaft, die die Voraussetzungen für eine Begünstigung auf abgabenrechtlichem Gebiet im übrigen erfüllt, eine Krankenanstalt (Heil- und Pflegeanstalt), so wird diese Anstalt auch dann als wirtschaftlicher Geschäftsbetrieb gemäß § 45 Abs. 1 behandelt, wenn sich die Körperschaft von der Absicht leiten läßt, durch den Betrieb der Anstalt Gewinn zu erzielen. Die Anstalt ist gleich einem unentbehrlichen Hilfsbetrieb gemäß § 45 Abs. 2 abgabefrei, wenn es sich um eine im Sinn des jeweils geltenden Krankenanstaltengesetzes gemeinnützig betriebene Krankenanstalt handelt.

§ 47

Die Betätigung einer Körperschaft für Zwecke der Verwaltung ihres Vermögens (§ 32) steht der Gewährung von Begünstigungen auf abgabenrechtlichem Gebiet (§ 34) nicht entgegen.

4.6.3. Standards for fundraising organisations with the OSGS

Standards by the OSGS[328]

Formale Voraussetzungen und Organisations

1. Die Organisation verfolgt gemeinnützige, mildtätige oder kirchliche Zwecke im Sinne der §§ 34 ff BAO, Bundesabgabenordnung.

2. Die Organisation verfügt über ein geordnetes Rechnungswesen mit internem Kontrollsystem und einen dem Organisationsumfang entsprechenden Abschluss des Rechnungswesens

3. Die Organisation ist in Österreich ansässig und besitzt eine österreichische oder EU-Rechtsform. Hat die Organisation keine eigene Rechtsform, so muss sie zumindest ein eigenes Organisationsstatut oder eine eigene Geschäftsordnung für den Spendenbereich haben und einem Rechtsträger angeschlossen sein. Rechtsträger können nur juristische Personen sein, die eine österreichische oder EU-Rechtsform haben.

4. Die Organisation verfügt über eine ausformulierte Selbstdarstellung. Die Selbstdarstellung gibt Auskunft über Rechtsform, Ziele und Zwecke der Organisation, benennt Personen, welche die Organisation nach außen

[328] http://www.osgs.at/downloadtexte/Koop-vertrag05_m_Beilagen.pdf, 28 February 2005.

vertreten und Gremien, die über die Verwendung der Gelder entscheiden.

5. Die Leitung ist einem übergeordneten Kontrollorgan verantwortlich. Die Mitglieder des Kontrollorgans dürfen kein persönliches finanzielles Interesse an der Organisation haben. Die Leitung darf kein persönliches finanzielles Interesse haben, das über das festgelegte Gehaltsschema hinausreicht.

6. Persönliche Verflechtungen von Mitgliedern des Leitungs- und des Kontrollorgans mit kommerziellen Unternehmungen, die in einer geschäftlichen Beziehung zur Organisation stehen, sind offen zu legen. Die Verfolgung des Organisationszwecks in Entsprechung oder im Sinne der §§ 34 ff BAO und sonstige Geschäftstätigkeiten der Organisation werden getrennt dargestellt. Bei Vorliegen von gewerblicher Tätigkeit durch eine Organisation wird dafür ein getrennter Organisationszweig und Buchhaltungskreis geführt.

7. Die Organisation entscheidet grundsätzlich in eigener Verantwortung über die Verwendung ihrer Spenden oder ist in die Entscheidung über die Verwendung eingebunden (z.B. bei internationalen Organisationen).

8. Die Organisation verfügt über ein in den zuständigen Gremien beschlossenes und dokumentiertes internes Kontrollsystem.

9. Die Organisation dokumentiert ein Gehaltsschema/die Gehaltsschemata, nach dem/nach denen ihre Dienstnehmer entlohnt werden.

10. Die Organisation verfügt über ein eigenes Bankkonto.

11. Die Organisation benennt einen Datenschutzbeauftragten, der für die Einhaltung der gesetzlichen Bestimmungen des Datenschutzgesetzes verantwortlich ist.

12. Die Organisation benennt einen Verantwortlichen/die Verantwortlichen für die Werbemaßnahmen.

13. Die Organisation verfügt über einen eigenen Internetauftritt, auf dem zumindest die Selbstdarstellung und der aktuelle Jahresbericht (laut Pkt. 34.) abgerufen werden können.

Kriterien: Werbung und Spendensammlung

15. Der Bereich ‚Lauterkeit in der Werbung' ist durch die für die zu prüfende Organisation vertretungsbefugten Personen in einer entsprechenden Selbstverpflichtung für korrektes und ethisches Spendenwerben verbindlich und öffentlich zu regeln. Der Kriterienkatalog führt dazu in den nachfolgenden Punkten wesentliche, zentrale Dimensionen an:

16. Die Letztverantwortung für Spendensammlungen und Werbung im Namen einer Organisation wird an Dritte nicht übertragen.

17. Bei Spendensammlungen und Werbung beachtet die Organisation neben den jeweiligen landesgesetzlichen Regelungen insbesondere die Bestimmungen des Konsumentenschutz-, des Datenschutz-, des Telekommunikationsgesetzes und des Gesetzes gegen unlauteren Wettbewerb (Konsumentenschutzgesetz insbesondere §§ 3,4,6,10,14; Telekommunikationsgesetz insbesondere § 101; Datenschutzgesetz insbesondere §§ 7-9. 24,25; Gesetz gegen unlauteren Wettbewerb insbesondere §§ 1,2).

18. Unbeschadet der Regelungen des Konsumentenschutzgesetzes räumt die Organisation bei Abschluss von Fördermitgliedschaften sowie bei Erteilung von Einziehungsaufträgen oder Lastschriftverfahren ein Rücktrittsrecht innerhalb von 14 Tagen ein. Erfolgt ein Rücktritt innerhalb dieser Frist, werden etwaig bereits bezahlte Beiträge rückerstattet.

19. Die Fördermitgliedschaft muss nach 12 Monaten ab Abschluss der Mitgliedschaft jederzeit und mit sofortiger Wirkung kündbar sein. Wird der Fördermitgliedsbeitrag über ein Jahr hinaus im voraus bezahlt, besteht ein Anspruch auf Rückerstattung des zum Zeitpunkt der Kündigung vorausbezahlten Anteils.

20. Die Organisation händigt dem Spender beim Werbevorgang eine Kopie der Verpflichtungserklärung bzw. des Fördermitgliedschaftsantrages aus und weist darin ausdrücklich auf das Rücktrittsrecht und darauf hin, dass bei Vorauszahlung des Fördermitgliedschaftsbeitrages über die Laufzeit hinaus ein Anspruch auf Rückerstattung des vorausbezahlten Anteils besteht.

21. Ohne bestehende konkrete Vorkontakte werden keine unerbetenen Telefon-, Telefax- oder E-Mail-Werbe-Vorgänge unternommen.

22. Die in der Werbung gemachten Aussagen in Wort und Bild sind wahr, eindeutig und sachlich richtig. Es werden keine wesentlichen Fakten verschwiegen und keine Übertreibungen oder irreführenden Fotos verwendet. Die Grenzen von Sitte und Anstand werden gewahrt.

23. Die Organisation verpflichtet sich bei Werbeaktivitäten auf der Strasse oder an der

Haustür Irreführungen der angesprochenen Personen zu vermeiden. Die Organisation trägt Sorge dafür, dass organisationsextern beauftragte Sammler (haupt- oder ehrenamtlich) bzw. Werbeagenturen den Inhalt dieses Kriterienkatalogs einhalten.

24. Es werden keine Bezeichnungen, Namen, Namenskürzel, Aufmachungen, Zeichen oder Logos verwendet, welche geeignet sind, Verwechslungen mit Bezeichnungen, Namen, Namenskürzel, Aufmachungen, Zeichen oder Logos anderer Organisationen oder Institutionen oder den Eindruck einer Beziehung zu anderen Organisationen oder Institutionen entstehen zu lassen.

Kriterien: Mittelverwendung

25. Spendenmittel:

a. Unter Spenden werden grundsätzlich Leistungen verstanden, welche an NPOs erfolgen und die keinerlei Anspruch auf Gegenleistungen beim Spender begründen. Bei Geldspenden handelt es sich um einmalige, mehrmalige oder regelmäßige Geldbeträge. Weiters werden der Geldspende gleichgestellt:

Mitgliedsbeiträge (Fördermitgliedschaften, Förderbeiträge, ...), Schenkungen, Legate, Erbschaften, Spenden von Unternehmen (ohne Erfordernis einer Gegenleistung) sowie Einnahmen aus Benefizveranstaltungen, Events, Bausteinaktionen, Nummernlotterien etc.

b. Unter sonstigen Einnahmen wird Folgendes erfasst: Sponsoring durch Unternehmen (Zuwendungen, für die Gegenleistungen vereinbart wurden), Zuwendungen, für die ein Warenwert retourniert wird, also etwa Verkauf von Gegenständen für gemeinnützige Zwecke, Merchandising, Einnahmen aus karitativen Flohmärkten, etc. sowie Sachspenden, wenn diese bewertet und buchhalterisch erfasst werden.

c. Erträge aus Kapitalvermögen aus Spendenmitteln, Zinsen und sonstige Ausschüttungen usw. abzüglich direkt zuordenbare Aufwendungen wie z.B.: KESt, Depotgebühren etc. gelten als Spendenmittel.

d. Die Auflösung von Rücklagen aus vergangenen Jahren wird zur Mittelherkunft gerechnet und ist gesondert auszuweisen.

e. Unentgeltliche, persönliche Arbeitsleistungen (Zeitspenden durch Ehrenamtliche und Freiwillige) gelten nicht als Spendenmittel.

26. Die Verwendung der Spenden erfolgt für die in der Selbstdarstellung angeführten gemeinnützigen, mildtätigen oder kirchlichen Zwecke und /oder für die in der Werbung dargestellten Zwecke bzw. für die Zwecke, die der Spender selbst bestimmt hat (Zweckbestimmung). Die Verwendung der Spenden erfolgt aufgrund der Beschlüsse des Entscheidungsgremiums.

27. Organisationen mit nationalen und internationalen Vernetzungen und Spendenweiterleitungen haben dies darzustellen und Einsicht in die zu berücksichtigenden Vereinbarungen zu geben.

28. Wenn die Verwendung für die in der Selbstdarstellung oder Werbung angeführten Zwecke nicht mehr möglich ist, weil eine Hilfsaktion bereits abgeschlossen, aufgrund unvorhergesehener Umstände abgebrochen oder sonst notwendigerweise beendet wurde, werden diese Spenden für ähnliche Zwecke verwendet.

29. Bei der Verwendung der Spenden werden die Grundsätze der Wirtschaftlichkeit und Sparsamkeit angewendet.

30. Die Kosten für Personalaufwand, Werbung, Selbstdarstellung und Spendensammlung sind angemessen.

31. Erträge aus veranlagten Spendenmittel sind gesondert auszuweisen und, soweit die Organisation frei über diese Erträge verfügen kann, wie Spenden zu behandeln.

32. Die Organisation erstellt bis spätestens 9 Monate nach Ende des Rechnungsjahres einen Rechnungsabschluss, aus dem Herkunft der Spendenmittel entsprechend der Gliederung nach Punkt 25. und die Verwendung der Spendenmittel eindeutig hervorgehen. Die Dotierung von Rücklagen ist gesondert unter Mittelverwendung auszuweisen.

33. Wenn im Rechnungsjahr erhaltene Spenden im selben Rechnungsjahr nicht zur Gänze ausgegeben werden, hat der Rechnungsabschluss einen entsprechenden Hinweis zu enthalten.

Informationspflicht:

34. Die Organisation erstellt bis spätestens 12 Monate nach Ende eines Rechnungsjahres einen jährlichen Jahresbericht (auch genannt: Rechenschaftsbericht oder Tätigkeitsbericht) Der Jahresbericht stellt die Tätigkeit der Organisation umfassend dar und enthält darüber hinaus eine Selbstdarstellung der Organisation und die Nennung der verantwortlichen Personen für die

Verwendung der Spenden, für die Spendenwerbung und für den Datenschutz.

Außerdem beinhaltet der Jahresbericht einen Finanzbericht der eine schlüssige und vollständige Darstellung der Spendeneinnahmen und Spendenverwendungen enthält.

34.1. Finanzbericht:

Der jährliche Finanzbericht, der eine schlüssige und vollständige Darstellung der Spendeneinnahmen und Spendenverwendungen bezweckt, ist zumindest folgendermaßen zu gliedern:

Mittelherkunft:

a) Spenden gemäß 25.a.

b) Sonstige Einnahmen gemäß 25.b.

c) Erträge aus Kapitalvermögen gemäß 25.c.

d) Auflösungen von Rücklagen gemäß 25.d.

Mittelverwendung:

a) Leistungen für die statuarisch festgesetzten Zwecke im In- und Ausland. Im EZA Bereich: Die Leistungen sind jene Mittel, die die Projektpartner in den Zielländern erhalten (Projektmittel) sowie alle Leistungen, die unmittelbaren Leistungen an die Partner erst möglich machen. Unter dieser Kategorie werden auch die Inlands-Arbeitsbereiche entwicklungspolitische Bildungs- und Informationsarbeit sowie Anwaltschaft und Lobbyarbeit zusammen gefasst. Zielland dieser Leistungen ist in der Regel Österreich.

b) Zurechenbare Aufwendungen der Spendenwerbung und Spendenbetreuung. Dieser Bereich umfasst alle direkten Kosten einer Organisation, die ihr jene Spendeneinnahmen erschaffen sollen, die ihr die Erbringung von Leistungen ermöglichen.

c) Verwaltungsaufwand

d) Dotierung von Rücklagen: Die Dotierung von Rücklagen wird gesondert unter Mittelverwendung ausgewiesen.

34.2. Auf Anfrage eines Spenders wird ein Jahresbericht durch die Organisation zur Verfügung gestellt.

34.3. Der Jahresbericht muss auf einer öffentlich zugänglichen Homepage online sein.

35. Die einem Spender und der interessierten Öffentlichkeit zugänglich gemachten Informationen entsprechen der eingegangenen Informationspflicht und ergeben ein wahres Bild über die Non Profit Organisation.

5. Belgium

5.1. Law on Associations

Law on non profit associations of 27 June 1921, amended 02 May 2002[329]

Chapitre Ier. — Associations sans but lucratif belges

Article 1er. — Le siège d'une association sans but lucratif belge, dénommée dans le présent chapitre « association », est situé en Belgique.

L'association jouit de la personnalité juridique aux conditions définies dans le présent chapitre.

L'association sans but lucratif est celle qui ne se livre pas à des opérations industrielles ou commerciales et qui ne cherche pas à procurer à ses membres un gain matériel. »

Art. 2. — Les statuts d'une association mentionnent au minimum :

1° les nom, prénoms, domicile, date et lieu de naissance de chaque fondateur, ou, lorsqu'il s'agit d'une personne morale, la dénomination sociale, la forme juridique et l'adresse du siège social;

2° la dénomination et l'adresse du siège social de l'association ainsi que l'indication de l'arrondissement judiciaire dont elle dépend;

3° le nombre minimum des membres. Il ne peut pas être inférieur à trois;

4° la désignation précise du ou des buts en vue desquels elle est constituée;

5° les conditions et formalités d'admission et de sortie des membres;

6° les attributions et le mode de convocation de l'assemblée générale ainsi que la manière dont ses résolutions sont portées à la connaissance des membres et des tiers;

7° a) le mode de nomination, de cessation de fonctions et de révocation des administrateurs, l'étendue de leurs pouvoirs et la manière de les

[329] http://www.just.fgov.be/index_fr.htm, 1 February 2005.

exercer, en agissant soit individuellement, soit conjointement, soit en collège, ainsi que la durée de leur mandat;

b) le cas échéant, le mode de nomination, de cessation de fonctions et de révocation des personnes habilitées à représenter l'association conformément à l'article 13, alinéa 4, l'étendue de leurs pouvoirs et la manière de les exercer, en agissant soit individuellement, soit conjointement, soit en collège;

c) le cas échéant, le mode de nomination, de cessation de fonctions et de révocation des personnes déléguées à la gestion journalière de l'association conformément à l'article 13bis, alinéa 1er, l'étendue de leurs pouvoirs et la manière de les exercer, en agissant soit individuellement, soit conjointement, soit en collège;

d) le cas échéant, le mode de nomination des commissaires;

8° le montant maximum des cotisations ou des versements à effectuer par les membres;

9° la destination du patrimoine de l'association en cas de dissolution, lequel doit être affecté à une fin désintéressée;

10° la durée de l'association lorsqu'elle n'est pas illimitée.

Ces statuts sont constatés dans un acte authentique ou sous seing privé. Dans ce dernier cas, nonobstant le prescrit de l'article 1325 du Code civil, deux originaux suffisent.

Art. 2bis. — Sans préjudice des articles 3, § 2, et 11, les membres ne contractent en cette qualité aucune obligation personnelle relativement aux engagements de l'association.

Art. 2ter. — Les statuts de l'association peuvent fixer les conditions auxquelles des tiers qui ont un lien avec l'association peuvent être considérés comme membres adhérents de l'association. Les droits et obligations des membres, fixés par la présente loi, ne s'appliquent pas aux membres adhérents. Leurs droits et obligations sont fixés par les statuts.

Art. 3. — § 1er. La personnalité juridique est acquise à l'association à compter du jour où ses statuts, les actes relatifs à la nomination des administrateurs, et, le cas échéant, des personnes habilitées à représenter l'association conformément à l'article 13, alinéa 4, sont déposés conformément à l'article 26novies, § 1er.

Les actes relatifs à la nomination des administrateurs et des personnes habilitées à représenter l'association comportent les mentions prescrites à l'article 9.

§ 2. Il pourra cependant être pris des engagements au nom de l'association avant l'acquisition par celle-ci de la personnalité juridique. Sauf convention contraire, ceux qui prennent de tels engagements, à quelque titre que ce soit, en sont personnellement et solidairement responsables, sauf si l'association a acquis la personnalité juridique dans les deux ans de la naissance de l'engagement et qu'elle a en outre repris cet engagement dans les six mois de l'acquisition de la personnalité juridique. Les engagements repris par l'association sont réputés avoir été contractés par elle dès leur origine.

Art. 3bis — La nullité d'une association ne peut être prononcée que dans les cas suivants:

1° si les statuts ne contiennent pas les mentions visées à l'article 2, alinéa 1er, 2° et 4°;

2° si un des buts en vue duquel elle est constituée, contrevient à la loi ou à l'ordre public.

Art. 3ter. — Sans préjudice de l'article 26novies, §§ 2 et 3, la nullité produit ses effets à dater de la décision qui la prononce.

La décision prononçant la nullité de l'association entraîne la liquidation de celle-ci conformément à l'article 19. Sans préjudice des effets de l'état de liquidation, la nullité de l'association n'affecte pas la validité de ses engagements ni celle des engagements pris envers elle.

Art. 10 — Le conseil d'administration tient au siège de l'association un registre des membres. Ce registre reprend les nom, prénoms et domicile des membres, ou lorsqu'il s'agit d'une personne morale, la dénomination sociale, la forme juridique et l'adresse du siège social. En outre, toutes les décisions d'admission, de démission ou d'exclusion

des membres sont inscrites dans ce registre par les soins du conseil d'administration endéans les huit jours de la connaissance que le conseil a eue de la décision.

Tous les membres peuvent consulter au siège de l'association le registre des membres, ainsi que tous les procès-verbaux et décisions de l'assemblée générale, du conseil d'administration ou des personnes, occupant ou non une fonction de direction, qui sont investies d'un mandat au sein ou pour le compte de l'association, de même que tous les documents comptables de l'association. Le Roi fixe les modalités d'exercice de ce droit de consultation.

Art. 13. — Le conseil d'administration est composé de trois personnes au moins. Toutefois, si seules trois personnes sont membres de l'association, le conseil d'administration n'est composé que de deux personnes. Le nombre d'administrateurs doit en tout cas toujours être inférieur au nombre de personnes membres de l'association.

Le conseil d'administration gère les affaires de l'association et la représente dans tous les actes judiciaires et extrajudiciaires. Tous les pouvoirs qui ne sont pas expressément réservés par la loi à l'assemblée générale sont de la compétence du conseil d'administration.

Les statuts peuvent apporter des restrictions aux pouvoirs attribués au conseil d'administration par l'alinéa précédent. Ces restrictions, de même que la répartition des tâches dont les administrateurs seraient éventuellement convenus, ne sont pas opposables aux tiers, même si elles sont publiées.

Toutefois, la représentation de l'association dans les actes judiciaires et extrajudiciaires peut, selon les modalités fixées par les statuts, être déléguée à une ou plusieurs personnes, administrateurs ou non, membres ou non, agissant soit individuellement, soit conjointement, soit en collège. Cette décision est opposable aux tiers dans les conditions prévues à l'article 26novies, § 3.

Art. 16. — Ale exceptions des dons manuels, toute libéralité entre vifs ou testamentaire au profit d'une association doit être autorisée par le Roi. Néanmoins, cette autorisation n'est pas requise pour l'acceptation des libéralités dont la valeur n'excède pas 100.000 EUR.

Le montant visé à l'alinéa 1er, est adapté au premier janvier de chaque année à l'indice des prix à la consommation du mois d'octobre de l'année précédente. L'indice de départ est celui du mois d'octobre 2001.

L'adaptation du montant est effectuée conformément à la formule suivante :

le nouveau montant est égal au montant de base multiplié par le nouvel indice et divisé par l'indice de départ. Le résultat est arrondi à la dizaine supérieure.

Le montant adapté est publié au Moniteur belge au plus tard le 15 décembre de chaque année.

L'autorisation ne peut en aucun cas être accordée si l'association ne s'est pas conformée aux dispositions des articles 3 et 9, ou si, en violation de l'article 26novies, elle n'a pas déposé au greffe du tribunal de première instance ses comptes annuels depuis sa création ou au moins les comptes se rapportant aux dix dernières années.

Art. 17. — § 1er. Chaque année et au plus tard six mois après la date de clôture de l'exercice social, le conseil d'administration soumet à l'assemblée générale, pour approbation, les comptes annuels de l'exercice social écoulé établis conformément au présent article, ainsi que le budget de l'exercice suivant.

§ 2. Les associations tiennent une comptabilité simplifiée portant au minimum sur les mouvements des disponibilités en espèces et en comptes, selon un modèle établi par le Roi.

§ 3. Toutefois, les associations tiennent leur comptabilité et établissent leurs comptes annuels conformément aux dispositions de la loi du 17 juillet 1975 relative à la comptabilité des entreprises, lorsqu'elles atteignent à la date de clôture de l'exercice social, les chiffres ci-dessous fixés pour au moins deux des trois critères suivants :

1° 5 travailleurs, en moyenne annuelle, exprimés en équivalents temps-plein inscrits au registre du personnel tenu en vertu de l'arrêté royal n° 5 du 23 octobre 1978 relatif à la tenue des documents sociaux;

2° 250.000 EUR pour le total des recettes, autres qu'exceptionnelles, hors taxe sur la valeur ajoutée;

3° 1.000.000 EUR pour le total du bilan.

Le Roi adapte les obligations résultant, pour ces associations, de la loi précitée du 17 juillet 1975, à ce que requièrent la nature particulière de leurs activités et leur statut légal. Les montants susmentionnés peuvent être adaptés par le Roi à l'évolution de l'indice des prix à la consommation.

§ 4. Les §§ 2 et 3 ne sont pas applicables aux associations soumises, en raison de la nature des

activités qu'elles exercent à titre principal, à des règles particulières, résultant d'une législation ou d'une réglementation publique, relatives à la tenue de leur comptabilité et à leurs comptes annuels, pour autant qu'elles soient au moins équivalentes à celles prévues en vertu de la présente loi.

§ 5. Les associations sont tenues de confier à un ou plusieurs commissaires le contrôle de la situation financière, des comptes annuels et de la régularité au regard de la loi et des statuts, des opérations à constater dans les comptes annuels lorsque le nombre moyen annuel de travailleurs occupés, inscrits au registre du personel tenu en vertu de l'arrêté royal n° 5 du 23 octobre 1978 relatif à la tenue des documents sociaux et exprimés en équivalents temps plein, dépasse 100 ou lorsque l'association dépasse à la clôture de l'exercice social les chiffres ci-dessous fixés pour au moins deux des trois critères suivants :

1° 50 travailleurs, en moyenne annuelle, exprimés en équivalents temps-plein inscrits au registre du personnel tenu en vertu de l'arrêté royal n° 5 du 23 octobre 1978 précité;

2° 6.250.000 EUR pour le total des recettes autres qu'exceptionnelles, hors taxe sur la valeur ajoutée;

3° 3.125.000 EUR pour le total du bilan.

Les commissaires sont nommés par l'assemblée générale parmi les membres, personnes physiques ou morales, de l'Institut des réviseurs d'entreprises. Les montants susmentionnés peuvent être adaptés par le Roi à l'évolution de l'indice des prix à la consommation.

§ 6. Dans les trente jours de leur approbation par l'assemblée générale, les comptes annuels des associations visées au § 3, sont déposés par les administrateurs à la Banque Nationale de Belgique.

Sont déposés en même temps et conformément à l'alinéa précédent :

1° un document contenant les nom et prénoms des administrateurs et, le cas échéant, des commissaires en fonction;

2° le cas échéant, le rapport du commissaire.

Le Roi détermine les modalités et conditions du dépôt des documents visés aux alinéas 1er et 2, ainsi que le montant et le mode de paiement des frais de publicité. Le dépôt n'est accepté que si les dispositions arrêtées en exécution du présent alinéa sont respectées.

Dans les quinze jours ouvrables qui suivent l'acceptation du dépôt, celui-ci fait l'objet d'une mention dans un recueil établi par la Banque Nationale de Belgique sur un support et selon les modalités que le Roi détermine. Le texte de cette mention est adressé par la Banque Nationale de Belgique au greffe du tribunal civil où est tenu le dossier de l'association, prévu à l'article 26novies, pour y être versé.

La Banque Nationale de Belgique est chargée de délivrer copie, sous la forme déterminée par le Roi, à ceux qui en font la demande, même par correspondance, soit de l'ensemble des documents qui lui ont été transmis en application des alinéas 1er et 2, soit des documents visés aux alinéas 1er et 2 relatifs à des associations nommément désignées et à des années déterminées qui lui ont été transmis. Le Roi détermine le montant des frais à acquitter à la Banque Nationale de Belgique pour l'obtention des copies visées au présent alinéa.

Les greffes des tribunaux obtiennent sans frais et sans retard de la Banque Nationale de Belgique, copie de l'ensemble des documents visés aux alinéas 1er et 2, sous la forme déterminée par le Roi.

La Banque Nationale de Belgique est habilitée à établir et à publier, selon les modalités déterminées par le Roi, des statistiques globales et anonymes relatives à tout ou partie des éléments contenus dans les documents qui lui sont transmis en application des alinéas 1er et 2.

Art. 18. — Le tribunal pourra prononcer à la requête soit d'un membre, soit d'un tiers intéressé, soit du ministère public, la dissolution de l'association qui :

1° est hors d'état de remplir les engagements qu'elle a contractés;

2° affecte son patrimoine ou les revenus de celui-ci à un but autre que ceux en vue desquels elle a été constituée;

3° contrevient gravement à ses statuts, ou contrevient à la loi ou à l'ordre public;

4° est restée en défaut de satisfaire à l'obligation de déposer les comptes annuels conformément à l'article 26novies, § 1er, alinéa 2, 5°, pour trois exercices sociaux consécutifs, à moins que les

comptes annuels manquants ne soient déposés avant la clôture des débats;

5° ne comprend pas au moins trois membres.

Le tribunal pourra prononcer l'annulation de l'acte incriminé, même s'il rejette la demande de dissolution.

5.2. Law on Foundations

Law on Foundations of 27 June 1921, amended 02 May 2002[330]

Art. 27. La création d'une fondation est le résultat d'un acte juridique émanant d'une ou de plusieurs personnes physiques ou morales consistant à affecter un patrimoine à la réalisation d'un but désintéressé déterminé. La fondation ne peut procurer un gain matériel ni aux fondateurs ni aux administrateurs ni à toute autre personne sauf, dans ce dernier cas, s'il s'agit de la réalisation du but désintéressé.

La fondation ne comprend ni membres ni associés.

La fondation est, a peine de nullité, constituée par acte authentique. Elle jouit de la personnalité juridique aux conditions définies au présent titre. Le notaire doit vérifier et attester le respect des dispositions prévues par le présent titre.

Une fondation peut être reconnue d'utilité publique lorsqu'elle tend à la réalisation d'une oeuvre à caractère philanthropique, philosophique, religieux, scientifique, artistique, pédagogique ou culturel.

Les fondations reconnues d'utilité publique portent l'appellation de " fondation d'utilité publique ". Les autres fondations portent l'appellation de " fondation privée ".

Art. 28. Les statuts d'une fondation mentionnent au moins :

1° les nom, prénoms, domicile, date et lieu de naissance de chaque fondateur ou, au cas où il s'agit d'une personne morale, la dénomination sociale, la forme juridique et l'adresse du siège social;

2° la dénomination de la fondation;

3° la désignation précise du ou des buts en vue desquels elle est constituée ainsi que les activités qu'elle se propose de mettre en oeuvre pour atteindre ces buts;

4° l'adresse du siège de la fondation, qui doit être situé en Belgique;

5° a) le mode de nomination, de révocation et de cessation des fonctions des administrateurs, l'étendue de leurs pouvoirs et la manière de les exercer;

b) le cas échéant, le mode de nomination, de révocation et de cessation des fonctions des personnes habilitées à représenter la fondation conformément à l'article 34, § 4, l'étendue de leurs pouvoirs et la manière de les exercer;

c) le cas échéant, le mode de nomination, de révocation et de cessation des fonctions des personnes déléguées à la gestion journalière de la fondation conformément à l'article 35, l'étendue de leurs pouvoirs et la manière de les exercer;

d) le cas échéant, le mode de nomination des commissaires;

6° la destination du patrimoine de la fondation en cas de dissolution, qui doit être affecté a une fin désintéressée. Toutefois, les statuts peuvent prévoir que lorsque le but désintéressé de la fondation est réalisé, le fondateur ou ses ayants droit pourront reprendre une somme égale à la valeur des biens ou les biens mêmes que le fondateur a affecté à la réalisation de ce but;

7° les conditions auxquelles les statuts peuvent être modifiés;

8° le mode de règlement des conflits d'intérêts.

Art. 29. § 1er. La personnalité juridique est acquise à la fondation privée à compter du jour où ses statuts et les actes relatifs à la nomination des administrateurs sont déposés au dossier visé à l'article 31, § 1er.

§ 2. Les statuts d'une fondation d'utilité publique sont communiqués au Ministre qui a la Justice dans ses compétences avec la demande de l'octroi de personnalité juridique et d'approbation des statuts. La personnalité juridique est acquise à la fondation d'utilité publique à la date de l'arrêté royal de reconnaissance.

§ 3. Il pourra cependant être pris des engagements au nom de la fondation avant l'acquisition par celle-ci de la personnalité juridique. Sauf convention contraire, ceux qui prennent de tels engagements, à quelque titre

[330] http://www.just.fgov.be/index_fr.htm, 27 January 2005.

que ce soit, en sont personnellement et solidairement responsables, sauf si la fondation a acquis la personnalité juridique dans les deux ans de la naissance de l'engagement et qu'elle a en outre repris cet engagement dans les six mois de l'acquisition de la personnalité juridique. Les engagements repris par la fondation sont réputés avoir été contractés par elle dès leur origine.

Art. 30. § 1er. Dans le cas d'une fondation privée, toute modification des mentions visées à l'article 28, 3° et 5° à 8°, doit être constatée par acte authentique.

§ 2. Dans le cas d'une fondation d'utilité publique, toute modification des mentions visées à l'article 28, 3° et 5° à 8°, doit être approuvée par le Roi. Les autres modifications apportées aux statuts doivent être communiquées au Ministre qui a la Justice dans ses compétences ou à son délégué et acceptées par l'un d'eux, aux conditions et dans les limites de la présente loi.

§ 3. Lorsque le maintien des statuts sans modification aurait des conséquences que le fondateur n'a raisonnablement pas pu vouloir au moment de la création, et que les personnes habilitées à les modifier négligent de le faire, le tribunal de première instance peut, à la demande d'un administrateur au moins ou à la requête du ministère public, modifier les statuts. Il veille à s'écarter le moins possible des statuts existants.

Art. 31. § 1er. Il est tenu au greffe du (tribunal de commerce) un dossier pour chaque fondation privée ayant son siège, ou son siège d'opération au sens de l'article 45, dans l'arrondissement. En cas de pluralité de sièges d'opération ouverts en Belgique par une même fondation, le dépôt peut être fait au greffe du (tribunal de commerce) dans l'arrondissement duquel l'un des sièges d'opération est établi, selon le choix de la fondation. Dans ce cas, la fondation visée à l'article 45 doit indiquer dans ses actes et sa correspondance, le lieu où son dossier est tenu.

§ 2. Il est tenu au Ministère de la Justice un dossier pour chaque fondation d'utilité publique.

§ 3. Sont déposés au dossier :

- les statuts et leurs modifications;
- le texte coordonné des statuts suite à leur modification;
- les actes relatifs à la nomination, à la révocation et à la cessation des fonctions des administrateurs et, le cas échéant, des personnes habilitées à représenter la fondation; ces actes précisent l'étendue des pouvoirs de ces personnes ainsi que la manière d'exercer ceux-ci;
- les comptes annuels de la fondation, établis conformément à l'article 37;
- les décisions et actes relatifs à la transformation d'une fondation privée en une fondation d'utilité publique pris conformément à l'article 44;
- les décisions et actes relatifs à la dissolution et à la liquidation de la fondation.

§ 4. Sont publiés, aux frais des intéressés, dans les annexes du Moniteur belge :

- les statuts et leurs modifications;
- les actes relatifs à la nomination, à la révocation et à la cessation des fonctions des administrateurs et, le cas échéant, des personnes habilitées à représenter la fondation;
- les décisions et actes relatifs à la transformation d'une fondation privée en une fondation d'utilité publique pris conformément à l'article 44;
- les décisions et actes relatifs à la dissolution et à la liquidation de la fondation.

§ 5. Le Roi détermine les conditions et les modalités de constitution et d'accès au dossier.

§ 6. Les actes, documents et décisions dont le dépôt est prescrit par le présent titre ne sont opposables aux tiers qu'a partir du jour de leur dépôt ou, lorsque la publication en est également prescrite par le présent titre, à partir du jour de leur publication aux annexes du Moniteur belge, sauf si la fondation prouve que ces tiers en avaient antérieurement connaissance.

Les tiers peuvent néanmoins se prévaloir des actes, documents et decisions dont le dépôt ou la publication n'ont pas été effectués.

En cas de discordance entre le texte déposé et celui qui est publié aux annexes du Moniteur belge, ce dernier n'est pas opposable aux tiers. Ceux-ci peuvent néanmoins s'en prévaloir, à moins que la fondation ne prouve qu'ils ont eu connaissance du texte déposé.

Art. 32. § 1er. Tous les actes, factures, annonces, publications et autres pièces émanant d'une fondation doivent mentionner la dénomination,

précédée ou suivie immédiatement des mots " fondation privée " ou " fondation d'utilité publique " ainsi que l'adresse de son siège.

Toute personne qui intervient pour une fondation dans un document visé à l'alinéa premier où l'une de ces mentions ne figure pas, peut être déclarée personnellement responsable de tout ou partie des engagements qui y sont pris par la fondation.

§ 2. Seules les fondations créées valablement conformément aux dispositions du présent titre peuvent porter le nom de " fondation d'utilité publique " ou de " fondation privée ". En cas de non-respect de cette exigence par une entité dotée ou non de la personnalité juridique, tout intéressé peut introduire une demande en changement d'appellation auprès du tribunal de première instance de l'arrondissement dans lequel ladite entité a son siège.

Art. 33. A l'exception des dons manuels, toute libéralité entre vifs ou testamentaire au profit d'une fondation doit être autorisée par le Roi. Néanmoins, cette autorisation n'est pas requise pour l'acceptation des libéralités dont la valeur n'excède pas 100.000 EUR.

Le montant visé a l'alinéa 1er, est adapté au premier janvier de chaque année à l'indice des prix à la consommation du mois d'octobre de l'année précédente. L'indice de depart est celui du mois d'octobre 2001.

L'adaptation du montant est effectuée conformément à la formule suivante : le nouveau montant est égal au montant de base multiplié par le nouvel indice et divisé par l'indice de départ. Le résultat est arrondi à la dizaine supérieure.

Le montant adapté est publié au Moniteur belge au plus tard le 15 décembre de chaque année.

L'autorisation ne peut en aucun cas être accordée si la fondation ne s'est pas conformée aux articles 31 et 45.

Art. 34. § 1er. La fondation est administrée par un conseil d'administration, composé de trois membres au moins, qui a le pouvoir d'accomplir tous les actes nécessaires ou utiles à la réalisation des buts de la fondation.

§ 2. Les membres du conseil d'administration exercent leur fonction de manière collégiale.

Dans des cas exceptionnels dûment justifiés par l'urgence et l'intérêt social, les décisions du conseil d'administration peuvent être prises, si les statuts l'autorisent, par consentement des administrateurs, exprimé par écrit.

§ 3. Le conseil d'administration peut convenir d'une répartition des tâches en son sein. Celle-ci n'est pas opposable aux tiers, même si elle est publiée.

§ 4. Le conseil d'administration représente la fondation dans les actes judiciaires et extrajudiciaires, soit en tant que demandeur, soit en tant que défendeur. Toutefois, les statuts peuvent donner qualité à un ou plusieurs administrateurs pour représenter la fondation, soit seuls, soit conjointement. Cette clause est opposable aux tiers conformément à l'article 31, § 6. Les statuts peuvent apporter des restrictions à ce pouvoir, mais ces restrictions ne sont pas opposables aux tiers, même si elles sont publiées.

Art. 35. La gestion journalière de la fondation, ainsi que la représentation de celle-ci en ce qui concerne cette gestion, peuvent, selon les modalités fixées par les statuts, être déléguées à une ou plusieurs personnes, administrateurs ou non, agissant seules ou conjointement.

Leur nomination, leur révocation et leurs attributions sont réglées par les statuts. Toutefois, les restrictions apportées à leurs pouvoirs de représentation pour les besoins de la gestion journalière sont inopposables aux tiers, même si elles sont publiées.

La clause en vertu de laquelle la gestion journalière est déléguée à une ou plusieurs personnes agissant soit seules, soit conjointement est opposable aux tiers dans les conditions prévues par l'article 31, § 6.

Art. 36. La fondation est responsable des fautes imputables à ses préposés ou aux organes par lesquels s'exerce sa volonté.

Les administrateurs et les délégués à la gestion journalière ne contractent en cette qualité aucune obligation personnelle relativement aux engagements de la fondation. Leur responsabilité se limite à l'exécution du mandat dont ils ont été chargés et aux fautes commises dans leur gestion.

Art. 37. § 1er. Chaque année et au plus tard six mois après la date de clôture de l'exercice social, le conseil d'administration établit les comptes annuels de l'exercice social écoulé, conformément

au présent article, ainsi que le budget de l'exercice suivant.

§ 2. Les fondations tiennent une comptabilité simplifiée portant au minimum sur les mouvements des disponibilités en espèces et en comptes, selon un modèle établi par le Roi.

§ 3. Toutefois, les fondations tiennent leur comptabilité et établissent leurs comptes annuels conformément aux dispositions de la loi du 17 juillet 1975 relative à la comptabilité des entreprises, lorsqu'elles atteignent à la clôture de l'exercice, les chiffres ci-dessous fixes pour au moins deux des trois seuils suivants :

1° 5 travailleurs en moyenne annuelle exprimés en équivalents temps plein, inscrits au registre du personnel tenu conformément à l'arrêté royal n° 5 du 23 octobre 1978 relatif a la tenue des documents sociaux;

2° 250.000 EUR pour le total des recettes autres qu'exceptionnelles, hors taxe sur la valeur ajoutée;

3° 1.000.000 EUR pour le total du bilan.

Le Roi adapte les obligations qui résultent, pour ces fondations, de la loi précitée du 17 juillet 1975, à ce que requièrent la nature particulière de leurs activités et leur statut légal.

Les montants susmentionnés peuvent être adaptés par le Roi à l'évolution de l'indice des prix à la consommation.

§ 4. Les §§ 2 et 3 ne sont pas applicables aux fondations soumises, en raison de la nature des activités qu'elles exercent à titre principal, à des règles particulières, résultant d'une législation ou d'une réglementation publique, relatives à la tenue de leur comptabilité et à leurs comptes annuels, pour autant qu'elles soient au moins équivalentes à celles prévues en vertu de la présente loi.

§ 5. Les fondations sont tenues de confier à un ou plusieurs commissaires le contrôle de leur situation financière, des comptes annuels et de la régularité au regard de la loi et des statuts, des opérations à constater dans les comptes annuels lorsque le nombre de travailleurs occupés, en moyenne annuelle, dépasse 100, exprimés en equivalents temps plein, ou lorsque la fondation dépasse les chiffres ci-dessous fixés pour au moins deux des trois critères suivants :

1° 50 travailleurs, en moyenne annuelle, exprimés en équivalents temps plein inscrits au registre du personnel tenu en vertu de l'arrêté royal n° 5 du 23 octobre 1978 relatif à la tenue des documents sociaux;

2° 6.250.000 EUR pour le total des recettes, autres qu'exceptionnelles, hors taxe sur la valeur ajoutée;

3° 3.125.000 EUR pour le total du bilan.

Les commissaires sont nommés par le conseil d'administration parmi les membres, personnes physiques ou morales, de l'Institut des réviseurs d'entreprises.

Les montants susmentionnés peuvent être adaptés par le Roi à l'évolution de l'indice des prix à la consommation.

§ 6. Dans les trente jours de leur approbation par le conseil d'administration, les comptes annuels des fondations privées visées au § 3 sont déposés par les administrateurs à la Banque Nationale de Belgique.

Sont déposés en même temps et conformément à l'alinéa précédent :

1° un document contenant les nom et prénoms des administrateurs et, le cas échéant, des commissaires en fonction;

2° le cas échéant, le rapport des commissaires.

Le Roi détermine les modalités et conditions du dépôt des documents visés aux alinéas 1er et 2, ainsi que le montant et le mode de paiement des frais de publicité. Le dépôt n'est accepté que si les dispositions arretées en exécution du présent alinéa sont respectées.

Dans les quinze jours ouvrables qui suivent l'acceptation du dépôt, celui-ci fait l'objet d'une mention dans un recueil établi par la Banque Nationale de Belgique sur un support et selon les modalités que le Roi détermine. Le texte de cette mention est adressé par la Banque Nationale de Belgique au greffe du (tribunal de commerce) où est tenu le dossier de la fondation privée, prévu à l'article 31, § 3, pour y être versé. <L 2003-01-16/34, art. 69, 010; En vigueur : 01-07-2003>

La Banque Nationale de Belgique est chargée de délivrer copie, sous la forme déterminée par le Roi, à ceux qui en font la demande, même par correspondance, soit de l'ensemble des documents qui lui ont été transmis en application des alinéas 1er et 2, soit des documents visés aux alinéas 1er et 2 relatifs à des fondations privées nommément désignées et à des années déterminées qui lui ont été transmis. Le Roi détermine le montant des frais à acquitter à la Banque Nationale de Belgique pour l'obtention des copies visées au présent alinéa.

Les greffes des tribunaux obtiennent sans frais et sans retard de la Banque Nationale de Belgique,

copie de l'ensemble des documents visés aux alinéas 1er et 2, sous la forme déterminée par le Roi.

La Banque Nationale de Belgique est habilitée à établir et à publier, selon les modalités déterminées par le Roi, des statistiques globales et anonymes relatives à tout ou partie des éléments contenus dans les documents qui lui sont transmis en application des alinéas 1er et 2.

(§ 7. Les articles 130 à 133, 134, §§ 1er et 3, 135 à 137, 139 et 140, 142 à 144 à l'exception de l'article 144, alinéa 1er, 4° et 5°, du Code des sociétés sont applicables par analogie aux fondations qui ont nommé un commissaire. Pour les besoins du présent article, les termes " code ", " société ", " assemblée générale " et " tribunal de commerce " utilisés dans les articles précités du Code des sociétés doivent s'entendre comme étant respectivement " loi ", " fondation ", " conseil d'administration " et " tribunal de première instance ".)

Art. 38. Toute action intentée par une fondation n'ayant pas respecté les formalités prévues à l'article 31 est suspendue. Le juge fixe un délai endéans lequel la fondation doit satisfaire à ses obligations. Si la fondation ne satisfait pas à ses obligations dans ce délai, l'action est irrecevable.

Art. 39. Seul le tribunal de première instance de l'arrondissement dans lequel la fondation a son siège pourra prononcer, à la requête d'un fondateur ou d'un de ses ayants droit, d'un ou de plusieurs administrateurs ou du ministère public, la dissolution de la fondation :

1° dont les buts ont été réalisés;

2° qui n'est plus en mesure de poursuivre les buts en vue desquels elle a été constituée;

3° qui affecte son patrimoine ou les revenus de celui-ci à des buts autres que celui en vue duquel elle a été constituée;

4° qui contrevient gravement à ses statuts, ou contrevient à la loi ou à l'ordre public;

5° qui est restée en défaut de satisfaire à l'obligation de déposer les comptes annuels conformément à l'article 31, § 3, pour trois exercices consécutifs, à moins que les comptes annuels manquants ne soient déposés avant la clôture des débats;

6° dont la durée vient à échéance.

Même s'il rejette la demande de dissolution, le tribunal pourra prononcer l'annulation de l'acte incriminé.

Art. 40. § 1er. Le tribunal prononçant la dissolution peut soit décider la clôture immédiate de la liquidation, soit déterminer le mode de liquidation et désigner un ou plusieurs liquidateurs. Lorsque la liquidation est terminée, les liquidateurs font rapport au tribunal et lui soumettent une situation des valeurs sociales et de leur emploi ainsi que la proposition d'affectation. Le tribunal autorise l'affectation des biens dans le respect des statuts.

Le tribunal prononce la clôture de la liquidation.

§ 2. L'action en dissolution fondée sur l'article 39, alinéa 1er, 5°, ne peut être introduite qu'à l'expiration d'un délai de sept mois suivant la date de clôture du troisième exercice comptable.

Art. 41. L'affectation de l'actif ne peut préjudicier aux droits des créanciers.

L'action des créanciers est prescrite par cinq ans à partir de la publication de la décision relative à l'affectation de l'actif.

Art. 42. Tous les actes, factures, annonces, publications et autres documents émanant d'une fondation ayant fait l'objet d'une décision de dissolution doivent mentionner la dénomination de la fondation précédée ou suivie immédiatement des mots " fondation privée en liquidation " ou " fondation d'utilité publique en liquidation ".

Toute personne qui intervient pour une fondation en liquidation dans un acte visé à l'alinéa 1er où cette mention ne figure pas, peut être déclarée personnellement responsable de tout ou partie des engagements qui y sont pris par la fondation.

Art. 43. Le tribunal de première instance de l'arrondissement dans lequel la fondation a son siège peut prononcer la révocation des administrateurs qui auront fait preuve de négligence manifeste, qui ne remplissent pas les obligations qui leur sont imposées par la loi ou par les statuts, ou qui disposent des biens de la fondation contrairement à leur destination ou pour des fins contraires aux statuts, à la loi ou à l'ordre public.

Dans ce cas, les nouveaux administrateurs seront nommés par le tribunal en se conformant aux statuts.

Art. 44. § 1er. Par acte authentique et moyennant l'approbation du Roi, toute fondation privée peut, en se conformant aux dispositions du présent titre, se convertir en fondation d'utilité publique. Cette conversion n'entraîne aucun changement dans la personnalité juridique de la fondation.

§ 2. A l'acte sont joints :

1° un rapport justificatif établi par le conseil d'administration;

2° un état résumant la situation active et passive de la fondation, arrêté à une date ne remontant pas à plus de trois mois;

3° un rapport sur cet état indiquant notamment s'il traduit d'une manière complète, fidèle et correcte la situation de la fondation, établi par un réviseur d'entreprises, ou un expert-comptable inscrit au tableau des experts-comptables externes de l'Institut des experts-comptables, désigné par le conseil d'administration.

L'acte est déposé au dossier visé a l'article 31, et publié conformément au § 4 de cette disposition.

Art. 45. Les fondations valablement constituées à l'étranger conformément à la loi de l'Etat dont elles relèvent peuvent ouvrir en Belgique un siège d'opération. Un siège d'opération est un établissement durable sans personnalité juridique distincte dont les activités sont conformes à l'objet social de la fondation. Ces fondations sont tenues de se conformer à l'article 31, § 1er et §§ 3 à 6.

5.3. Law on NPO

There is no specific law on NPOs in Belgium

5.4. Law on NGO

5.4.1. Royal Decree Law on NGO for Development

Royal Decree Law on NGO for Development of 18 July 1997 "Arrêté royal relatif à l'agrément et à la subvention d'organisations non gouvernementales de développement et de leurs fédérations"[331]

CHAPITRE I. - Définitions.

Article 1. Dans le présent arrêté, on entend par :

1° "le Ministre": le Ministre qui a la Coopération au développement dans ses attributions;

2° "l'administration": la Direction générale de la Coopération internationale du Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération internationale.)

3° "ONG": l'organisation non gouvernementale, en abregé ONG, qui peut être agréée et bénéficier de subsides conformément au présent arrêté;

4° "fédération": l'association d'ONG, qui peut être agréée et bénéficier de subsides conformement au présent arrêté;

5° "pays partenaire": le pays considéré comme pays en voie de développement par le Comité d'aide au développement de l'Organisation de coopération et de développement économiques;

6° "partenaire local": l'organisation ou l'institution avec laquelle l'ONG coopère dans le pays partenaire;

7° "cooperant ONG": la personne envoyée en mission par une ONG et pour laquelle l'ONG bénéficie d'un subside visé à l'article 16;

8° "programme quinquennal": le cadre stratégique au sein duquel l'ONG ou le (consortium) propose un ensemble cohérent d'objectifs à moyen terme. Ces objectifs sont axés, directement ou indirectement, sur une amélioration structurelle et durable de la position de groupes et d'individus issus des catégories sociales pauvres des pays partenaires. Ce cadre stratégique contient une description des objectifs, du planning, des méthodes de travail et des mécanismes d'évaluation et de suivi, et prévoit, à titre indicatif, les moyens financiers nécessaires pour les cinq prochaines années;

9° "plan d'action": la concretisation annuelle du programme quinquennal. Il contient les activités concrètes que l'ONG veut exécuter pendant l'année calendrier à venir et le rapport des activités qui ont été exécutées pendant l'année calendrier précédente et celle en cours, dans le cadre de ce programme. tion annuelle du programme. Il contient les orientations stratégiques, les priorités et la cohérence globale des activités, visées à l'article 8, que l'ONG veut exécuter pendant cette année, ainsi qu'une description des objectifs, des méthodes de travail et des mécanismes d'évaluation et de suivi. Il

[331] http://www.juridat.be/cgi_loi/loi_F.pl?cn=1997071842, 2 February 2005.

contient aussi le budget nécessaire à leur réalisation;

10° "expert indépendant": la personne qui peut justifier d'une expérience utile en matière de coopération au développement, qui n'est pas liée par un contrat de travail à une ONG ou à une fédération, qui n'est pas membre du conseil d'administration d'une de ces organisations et qui n'est pas membre de l'administration ou du cabinet du Ministre;

11° "boursier": le ressortissant d'un pays partenaire pour lequel l'ONG bénéficie d'une bourse d'études ou de stage, visée à l'article 18.

12° "consortium": l'association de fait établie via une convention entre au moins deux personnes juridiques, ayant comme objectif la rédaction et la réalisation d'un programme quinquennal. Au moins un membre du consortium est une ONG agréée. Tous ont une forme juridique telle que définie à l'article 10, 1° de la Loi du 25 mai 1999 relative à la Coopération internationale belge, et tous ont comme objet social important la coopération au développement.

13° "Loi Coopération internationale": la Loi du 25 mai 1999 relative à la Coopération internationale belge.

14° "programme pluriannuel": programme tel que visé à l'article 10, 4° de la Loi Coopération internationale.

CHAPITRE II. - De l'agrément des ONG.

Art. 2. L'ONG qui désire être agréée introduit à cette fin une demande d'agrément auprès du Ministre. Elle peut le faire à tout moment.

Le Ministre décide au plus tard six mois après l'introduction de la demande d'agrément.

Le Ministre établit les modalités pour l'introduction et le traitement de la demande d'agrément.

Art. 3. § 1er. L'ONG qui désire être agréée, doit, à la date de sa demande, répondre au moins aux critères fixés par l'article 10 de la Loi Coopération internationale.

§ 2. Le programme pluriannuel tel que prévu à l'article 10, 4° de la Loi Coopération internationale contient les éléments suivants :

1° Une description des activités de l'ONG basée sur l'analyse de son identité, de l'environnement à l'intérieur duquel elle fonctionne, et de ses points forts et faibles en tant qu'organisation;

2° Une description de sa vision en matière de coopération internationale, ses objectifs à long terme et la stratégie qu'elle utilise pour atteindre ces objectifs, y compris les implications organisationnelles et institutionnelles pour l'ONG;

3° Le plan financier. Celui-ci donne un aperçu de tous les moyens financiers que l'ONG pense pouvoir mettre en oeuvre au cours du programme pluriannuel pour réaliser tous ses objectifs. Sont ici visés aussi bien les moyens propres de l'ONG que les moyens provenant d'instances publiques ou privées. Ces moyens sont mentionnés séparément dans le plan financier selon leur origine et le type d'activités.

§ 3. Etre autonome, tel que visé à l'article 10, 5°, de la Loi Coopération internationale, signifie que des membres du personnel du Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération internationale, ou des membres du cabinet du Ministre ne peuvent pas occuper un mandat de gestion au sein d'une ONG et que des relations de l'ONG avec des tiers ne sont pas admises si elles subordonnent les objectifs statutaires propres de l'ONG aux intérêts de ces tiers.

§ 4. Etre à même d'assurer la continuité de son fonctionnement, comme prévu à l'article 10, 6° de la Loi Coopération internationale, signifie que l'ONG dispose d'au moins de l'équivalent d'un collaborateur plein temps, de locaux équipés qui lui sont réservés exclusivement et où une permanence est assurée pendant les heures du bureau, et de ressources propres suffisantes dont plus de la moitié sont d'origine belge, publique ou privée.

Art. 4. § 1er. L'agrément est accordé pour une durée indéterminée.

§ 2. Lorsque, sur une durée de trois ans consécutifs, une ONG n'a plus reçu de subsides dans le cadre du présent arrêté, ni seule, ni en tant que membre d'un consortium, elle perd d'office son agrément à la date ultime d'introduction de demande de subsides.

§ 3. Pendant les six mois qui précèdent la date prévue au § 2, l'ONG peut, par une procédure simplifiée fixée par le Ministre, demander la prolongation de son agrément.

§ 4. Au cours de la période d'agrément l'ONG doit, de manière ininterrompue, répondre aux critères déterminés à l'article 3, § 1er.

Art. 5. § 1er. Le Ministre peut suspendre et retirer l'agrément si l'ONG ne répond plus aux critères d'agrément, si elle méconnaît gravement les dispositions du présent arrêté ou si elle empêche l'exercice du contrôle.

§ 2. S'il est constaté que l'ONG agréée ne répond plus aux critères d'agrément, qu'elle méconnaît gravement les dispositions du présent arrêté ou qu'elle empêche l'exercice de contrôle, le Ministre informe l'ONG des manquements constatés par lettre recommandée et motivée.

§ 3. Le Ministre peut décider de suspendre le payement de subsides pour des activités approuvées de l'ONG concernée, soit directement, soit au cours de l'enquête administrative relative aux manquements constatés, ou de reporter temporairement chaque décision relative à une nouvelle demande de subside introduite par l'ONG. Si le Ministre décide d'adopter cette mesure provisoire, cela sera stipulé soit dans la lettre dont mention au § 2, soit dans une nouvelle lettre recommandée et motivée à l'ONG.

§ 4. L'ONG dispose d'un délai de soixante jours calendrier, à partir du jour suivant la reception de la lettre recommandée visée au § 2, pour faire valoir son point de vue par rapport aux manquements constatés, dans une lettre de réclamation adressée au Ministre. L'ONG a le droit d'être entendue par le Ministre ou son délégué.

Si le jour d'expiration du délai de soixante jours calendrier tombe un samedi, un dimanche ou un jour férié légal, il est reporté au premier jour ouvrable qui suit.

§ 5. Si le Ministre, à l'expiration du délai visé au § 4, constate qu'il n'y a pas de raison valable qui justifie la suspension ou le retrait de l'agrément de l'ONG, il le communique par lettre recommandée à l'ONG. S'il a été fait usage par le Ministre des dispositions visées sous le § 3, le Ministre met fin, simultanément, à cette mesure provisoire.

§ 6. Si le Ministre constate, à l'issue du délai tel que fixé au § 4, qu'il y a des raisons valables justifiant la suspension de l'agrément, il le communique par lettre recommandée et motivée à l'ONG. Dans cette lettre sont spécifiés la date à laquelle prend cours la suspension de l'agrément et en même temps le délai au cours duquel l'ONG doit régulariser les manquements constatés.

Durant la période de suspension de l'agrément, le payement des subsides auxquels l'ONG a droit pour des activités approuvées est suspendu et toute décision relative à une nouvelle demande de subsides introduite par l'ONG est reportée. Le Ministre peut prendre des mesures conservatoires pour garantir les résultats des activités en cours.

§ 7. Si le Ministre constate que l'ONG, à l'issue du délai de suspension communiqué par lettre recommandée, répond à nouveau aux critères d'agrément et qu'elle a régularisé les manquements constatés, il est procédé par le Ministre à la levée de la suspension de l'agrément.

La décision est communiquée à l'ONG par lettre recommandée. Le Ministre met fin en même temps à la mesure de suspension du versement de subsides à l'ONG pour des activités approuvées et à la mesure de report de décision visant une nouvelle demande de subside.

§ 8. Si le Ministre constate que l'ONG, à l'expiration de la période de suspension mentionnée dans la lettre recommandée, ne répond pas à nouveau aux critères d'agrément et n'a pas régularisé les manquements constatés, il est décidé par le Ministre de procéder au retrait de l'agrément. La décision est communiquée à l'ONG par lettre recommandée et motivée. Dans cette lettre est mentionnée la date à laquelle le retrait de l'agrément produit ses effets.

§ 9. Par dérogation aux dispositions définies au § 6, le Ministre peut, à l'expiration du délai visé au § 4, décider du retrait immédiat de l'agrément de l'ONG si cela est justifié par des faits graves. La décision est communiquée à l'ONG par lettre recommandée et motivée, et mentionne la date à laquelle le retrait de l'agrément produit ses effets.

§ 10. Quand la procédure telle que mentionnée aux § 1er au § 8 est appliquée à une ONG qui fait partie d'un consortium, la lettre recommandée, telle que visée à § 2, est notifiée aux autres membres du consortium.

5.4.2. Law on the Belgian international cooperation

Law on the Belgian international cooperation of 25 May 1999 "Loi relative à la coopération internationale belge"[332]

Article 1er La présente loi regle une matiere visée à l'article 78 de la Constitution.

Article 2 Dans la présente loi, on entend par:

1° «coopération internationale belge»:

[332] http://www.juridat.be/cgi_loi/loi_F.pl?cn=1999052545, 2 February 2005.

les actions et contributions de l'Etat belge en matière de coopération bilatérale directe, multilatérale et bilatérale indirecte;

2° «ministre»:

le membre du gouvernement qui a la Coopération internationale belge dans ses attributions;

3° «pays partenaire»:

pays considéré comme pays en voie de développement par le Comité d'aide au développement de l'Organisation de Coopération et de Développement économiques;

4° «organisations autres que gouvernementales»:

organisations qui peuvent être agréées par le ministre et qui peuvent bénéficier de subventions de l'Etat belge pour leurs activités en matiere de coopération au développement;

5° «coopération bilatérale directe»:

programmes ou projets dans un pays partenaire, financés par l'Etat belge, sur base d'une convention entre les deux pays;

6° «coopération bilatérale indirecte»:

programmes ou projets dans un pays partenaire, financés ou cofinancés par l'Etat belge sur la base d'une convention avec un tiers, qui répond de l'exécution du projet ou du programme;

7° «coopération multilatérale»:

programmes ou projets financés par l'Etat belge et exécutés par une organisation internationale et des contributions belges à des organisations internationales pour leurs programmes ou projets de développement;

8° «programme»:

ensemble cohérent d'objectifs à court ou à moyen terme, axé, directement ou indirectement, sur une amélioration structurelle et durable de la position de groupes d'individus et d'individus issus des catégories sociales pauvres des pays partenaires;

9° «projet»:

initiative qui peut notamment prendre la forme d'interventions, de dons, d'aides financières ou de bourses;

10° «développement durable»:

développement axé sur la satisfaction des besoins actuels, sans compromettre les besoins des générations futures, et dont la réalisation nécessite un processus de changements adaptant l'utilisation des ressources, l'affectation des investissements, le ciblage du développement technologique et les structures institutionnelles aux besoins tant actuels que futurs;

11° «partenariat»:

mode de coopération actif et participatif entre partenaires, dans le cadre de la coopération au développement, avec une attention particulière pour le développement des capacités locales, la décentralisation des interventions au niveau des groupes-cibles visés et la responsabilisation du pays partenaire, notamment par l'association au processus de développement des pouvoirs publics, de la société civile et du secteur économique privé du pays partenaire;

12° «bonne gouvernance»:

méthode qui vise à optimaliser la gestion des capacités institutionnelles, le processus de décision des autorités publiques et la gestion des fonds publics, dans le respect de la démocratie, de l'Etat de droit, de même que des droits de l'homme et des libertés fondamentales;

13° «aide publique belge au développement»:

l'ensemble des contributions des différentes autorités belges, à la fois fédérales et décentralisées, en matiere d'aide au développement, qui sont reconnues par le Comité d'aide au Développement (CAD) de l'Organisation de Coopération et de Développement économiques, selon ses normes, comme «aide publique au développement» (APD).

Art. 3. La coopération internationale belge a pour objectif prioritaire le développement humain durable, à réaliser par le biais de la lutte contre la pauvreté, sur la base du concept de partenariat et dans le respect des critères de pertinence pour le développement.

La coopération internationale belge contribue, dans ce cadre, à l'objectif général de développement et de consolidation de la démocratie et de l'Etat de droit, en ce compris le principe de bonne gouvernance, ainsi qu'à l'objectif du respect de la dignité humaine, des droits de l'homme et des libertés fondamentales, avec une attention particulière pour la lutte contre toute forme de discrimination pour des raisons sociales, ethniques, religieuses, philosophiques ou fondées sur le sexe.

La coopération fédérale favorise la synergie avec les coopérations communales, provinciales, régionales, communautaires et européennes, afin d'en obtenir des effets amplificateurs favorables à terme aux populations bénéficiaires de l'assistance.

De manière à réaliser l'objectif de développement humain durable, la coopération internationale belge favorise le développement socio-économique et socioculturel et le renforcement de l'assise sociétale des pays partenaires, de même qu'elle sensibilise l'opinion publique belge.

Art. 4. En vue de contribuer à un développement humain durable, la coopération internationale belge prend en compte la pertinence au développement mesurée à l'aide des critères fixés par le Comité d'aide au développement de l'Organisation de Coopération et de Développement économiques, qui permettent de vérifier si les actions tiennent compte d'une manière suffisante des principes de base suivants:

1° renforcement des capacités institutionnelles et de gestion;

2° impact économique et social;

3° viabilité technique et financière,

4° efficacité de la procédure d'exécution prévue;

5° attention portée à l'égalité entre hommes et femmes;

6° respect pour la protection ou la sauvegarde de I 'environnement

Art. 10. La coopération internationale belge concentre la coopération bilatérale indirecte sur les organisations non gouvernementales sélectionnées selon une procédure et des modalités fixées par le Roi, qui répondent au moins aux critères suivants :

1° être constituée conformément à la loi du 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique ou être une société à finalité sociale conformément à la loi du 13 avril 1996 modifiant les lois sur les sociétés commerciales, coordonnées le 30 novembre 1935;

2° avoir comme principal objet social la coopération au développement;

3° avoir une expérience pertinente et actuelle dans un ou plusieurs domaine(s) d'activité(s) défini(s) par le Roi et le prouver en déposant des rapports d'activités sur le fonctionnement des trois dernières années, et être prête à se soumettre à une évaluation de son fonctionnement conformément la procédure établie par le Roi;

4° avoir une approche planifiée qui doit ressortir d'un programme pluriannuel, en ce compris un plan financier établi conformément aux modalités fixées par le Roi

5° être autonome conformément aux modalités fixées par le Roi;

6° être à même d'assurer la continuité de son fonctionnement conformément aux conditions fixées par le Roi;

7° avoir une majorité des membres des organes de direction qui possèdent la nationalité belge;

8° mener des activités conformes aux objectifs de la coopération internationale belge visés à l'article 3 et tenant compte des critères de pertinence visés à l'article 4;

9° gérer une comptabilité transparente.

Article 11 La coopération internationale belge vise la coopération bilatérale indirecte avec les sociétés, groupements, associations ou institutions de droit public, notamment via les communautés, les régions, les provinces et les communes, ou privé autres que les organisations visées à l'article 10, sélectionnées, selon une procédure et des modalités fixées par le Roi, comme «partenaires de la coopération bilatérale indirecte», qui répondent au moins aux critères suivants:

1° avoir une approche planifiée qui doit ressortir d'un programme dont la procédure et les modalités d'élaboration sont fixées par le Roi, permettant une évaluation des contributions de la coopération bilatérale indirecte, selon les modalités fixées par le Roi;

2° exercer des activités compatibles avec les objectifs de la coopération internationale belge visés à l'article 3 et tenant compte des critères de pertinence au développement visés à l'article 4.

Promulguons la présente loi, ordonnons qu'elle soit revêtue du sceau de l'Etat et publiée par le Moniteur belge.

Donné à Bruxelles, le 25 mai 1999.

5.5. Law on other legal forms

5.5.1. Companies Code

The Companies Code of 7 May 1999 "Le Code des sociétés"[333].

Le Code des sociétés a fait l'objet de la loi du 7 mai 1999 est il est entré en vigueur le 6 février 2001.

Art. 2. § 1er. La société de droit commun, la société momentanée et la société interne ne bénéficient pas de la personnalité juridique.

§ 2. Le présent code reconnaît en tant que société commerciale dotée de la personnalité juridique :

- la société en nom collectif, en abrégé SNC;
- la société en commandite simple, en abrégé SCS;
- la société privée à responsabilité limitée, en abrégé SPRL;
- la société coopérative, qui peut être à responsabilité limitée, en abrégé SCRL, ou à responsabilité illimitée, en abrégé SCRI;
- la société anonyme, en abrégé SA;
- la société en commandite par actions, en abrégé SCA;
- le groupement d'intérêt économique, en abrégé GIE.
- la Société européenne, en abrégé SE.

§ 3. Il reconnaît en tant que société civile dotée de la personnalité juridique, la société agricole, en abrégé S. Agr.

§ 4. Les sociétés visées aux §§ 2 et 3 acquièrent la personnalité juridique à partir du jour où est effectué le dépôt visé à l'article 68. Toutefois, la SE acquiert la personnalité juridique le jour de son inscription au registre des personnes morales, répertoire de la Banque-Carrefour des Entreprises, conformément à l'article 67, § 2.

En l'absence du dépôt visé à l'alinéa 1er, une société à objet commercial qui n'est ni une société en formation, ni une société momentanée, ni une société interne, est soumise aux règles concernant la société de droit commun et, en cas de dénomination sociale, à l'article 204

Livre dix

Les sociétés à finalité sociale

CHAPITRE PREMIER - Nature et qualification

Article 661

Les sociétés dotées de la personnalité juridique énumérées à l'article 2, § 2, sont appelées sociétés à finalité sociale lorsqu'elles ne sont pas vouées à l'enrichissement de leurs associés et lorsque leurs statuts :

1° stipulent que les associés ne recherchent qu'un bénéfice patrimonial limité ou aucun bénéfice patrimonial;

2° définissent de façon précise le but social auquel sont consacrées les activités visées dans leur objet social et n'assignent pas pour but principal à la société de procurer aux associés un bénéfice patrimonial indirect;

3° définissent la politique d'affectation des profits conforme aux finalités internes et externes de la société, conformément à la hiérarchie établie dans les statuts de ladite société, et la politique de constitution de réserves;

4° stipulent que nul ne peut prendre part au vote à l'assemblée générale pour un nombre de voix dépassant le dixième des voix attachées aux parts ou actions représentées; ce pourcentage est porté au vingtième lorsqu'un ou plusieurs associés ont la qualité de membre du personnel engagé par la société;

5° stipulent, lorsque la société procure aux associés un bénéfice patrimonial direct limité, que le bénéfice distribué à ceux-ci ne peut dépasser le taux d'intérêt fixé par le Roi en exécution de la loi du 20 juillet 1955 portant institution d'un Conseil national de la coopération, appliqué au montant effectivement libéré des parts ou actions;

6° prévoient que, chaque année, les administrateurs ou gérants feront rapport spécial sur la manière dont la société a veillé à réaliser le but qu'elle s'est fixé conformément au 2°; ce rapport établira notamment que les dépenses relatives aux investissements, aux frais de fonctionnement et aux rémunérations sont conçues de façon à privilégier la réalisation du but social de la société;

7° prévoient les modalités permettant à chaque membre du personnel d'acquérir, au plus tard un

[333] http://www.juridat.be/cgi_loi/loi_F.pl?cn=1999050769, 3 February 2005.

an après son engagement par la société, la qualité d'associé; cette disposition ne s'applique pas aux membres du personnel qui ne jouissent pas de la pleine capacité civile;

8° prévoient les modalités permettant que le membre du personnel qui cesse d'être dans les liens d'un contrat de travail avec la société perde, un an au plus tard après la fin de ce lien contractuel, la qualité d'associé;

9° stipulent qu'après l'apurement de tout le passif et le remboursement de leur mise aux associés, le surplus de liquidation recevra une affectation qui se rapproche le plus possible du but social de la société.

Le rapport spécial visé au 6° sera intégré au rapport de gestion devant être établi conformément aux articles 95 et 96.

Article 662

Les sociétés visées à l'article 661 qui adoptent de telles dispositions statutaires doivent ajouter à toute mention de leur forme juridique les mots « à finalité sociale ». C'est ainsi complétée que la forme de la société doit être mentionnée dans les extraits publiés conformément aux articles 68 et 69.

Article 663

Si une société ne respecte plus les dispositions visées à l'article 661, les réserves existantes ne peuvent, sous quelque forme que ce soit, faire l'objet d'une distribution. L'acte de modification des statuts doit déterminer leur affectation en se rapprochant le plus possible du but social qu'avait la société; il doit être procédé à cette affectation sans délai.

A défaut, le tribunal condamne solidairement, à la requête d'un associé, d'un tiers intéressé ou du ministère public, les administrateurs ou gérants au paiement des sommes distribuées ou à la réparation de toutes les conséquences provenant d'un non-respect des exigences prévues ci-dessus à propos de l'affectation desdites réserves.

Les personnes visées à l'alinéa 2 peuvent aussi agir contre les bénéficiaires si elles prouvent que ceux-ci connaissaient l'irrégularité des distributions effectuées en leur faveur ou ne pouvaient l'ignorer compte tenu des circonstances.

Article 664

Sans préjudice des dispositions du présent livre, les sociétés à finalité sociale sont régies par les dispositions applicables à la forme de société choisie.

CHAPITRE II - Règles particulières au capital d'une société à finalité sociale

Article 665

§ 1er. Lorsqu'une société à finalité sociale prend la forme d'une société coopérative à responsabilité limitée le montant de la part fixe du capital social est au moins égal à 6.150 €.

Ce montant doit être intégralement souscrit.

Il doit être libéré à concurrence de 2.500 € à la constitution de la société, et intégralement libéré après deux ans.

§ 2. Les fondateurs sont solidairement tenus envers les intéressés de toute la part fixe du capital qui ne serait pas valablement souscrite ainsi que de la différence éventuelle entre, d'une part, les montants visés aux alinéas 1er et 3 et, d'autre part, le montant des souscriptions; ils sont de plein droit réputés souscripteurs.

Article 666

Lorsque l'actif net de la société visée à l'article 665 est réduit à un montant inférieur à 2.500 €, tout intéressé peut demander au tribunal la dissolution de la société. Le tribunal peut, le cas échéant, accorder à la société un délai en vue de régulariser sa situation.

Article 667

A la requête soit d'un associé, soit d'un tiers intéressé, soit du ministère public, le tribunal peut prononcer la dissolution :

1° d'une société qui se présente comme société à finalité sociale alors que ses statuts ne prévoient pas ou ne prévoient plus tout ou partie des dispositions visées à l'article 661;

2° d'une société à finalité sociale qui, dans sa pratique effective, contrevient aux dispositions statutaires qu'elle a adoptées conformément à l'article 661.

CHAPITRE III - Transformation d'une association sans but lucratif en société à finalité sociale

Article 668

§ 1er. Lorsqu'une association sans but lucratif s'est transformée en société à finalité sociale conformément aux articles 26bis à 26septies de la loi du 27 juin 1921, le montant d'actif net visé à l'article 26sexies, § 1er, de cette loi doit être identifié dans les comptes annuels de la société.

§ 2. Ce montant ne peut faire l'objet, sous quelque forme que ce soit, d'un remboursement aux associés ou d'une distribution.

Après le règlement de tous les créanciers sociaux en cas de cessation, le liquidateur ou, le cas échéant, le curateur donne à ce montant une affectation qui se rapproche autant que possible du but assigné à la société conformément à l'article 661, 2°.

Ce montant est soumis au régime prévu à l'article 663, si, par suite d'une modification statutaire, la société n'est plus une société à finalité sociale.

Article 669

A la requête soit d'un associé, soit d'un tiers intéressé, soit du ministère public, le tribunal condamne solidairement soit les administrateurs ou gérants, soit le ou les liquidateurs, soit le ou les curateurs au paiement des sommes qui auraient été remboursées ou distribuées en contrariété avec l'article 668, § 2, alinéa 1er. Ces sommes sont soit versées à un compte de réserve indisponible, soit affectées par le tribunal conformément à l'article 668, § 2, alinéa 2.

Les personnes visées à l'alinéa 1er peuvent aussi agir contre les bénéficiaires si elles prouvent que ceux-ci connaissaient l'irrégularité des remboursements ou distributions effectués en leur faveur ou ne pouvaient l'ignorer compte tenu des circonstances.

5.6. Other laws

5.6.1. "La Banque-Carrefour des Entreprises (BCE)"

"La Banque-carrefour des Entreprises (BCE)" est un registre reprenant toutes les données d'identification concernant les entreprises et leurs unités d'établissement. Elle reprend les données du registre national des personnes morales, du registre du Commerce, de la TVA, de l'ONSS et est tenue à jour par les organismes compétents qui y introduisent les données.

Toutes ces données ont été rassemblées par le Service public fédéral Economie dans la base de données Banque-carrefour des Entreprises. La BCE est un projet interdépartemental impliquant une étroite collaboration entre le SPF Economie, FEDICT, l'Agence pour la Simplification administrative (ASA), le SPF Finances, le SPF Justice et le SPF Sécurité sociale. Le SPF Economie a alimenté cette banque de données, en collaboration avec ces différents services. La BCE est réellement le carrefour vers où convergent les données des entreprises.

Les services publics Finances (TVA), Affaires sociales (ONSS), Justice (greffe du tribunal de commerce) et les guichets d'entreprise sont tous reliés à la Banque-carrefour des Entreprises.

Ils introduisent les données dans la BCE et les corrigent si nécessaire.

L'idée de centraliser et d'uniformiser toutes les données d'identification des entreprises et de les mettre à la disposition de tous les services publics.

Le Registre du Commerce n'est plus un fichier de données distinct; il fait partie intégrante de la Banque-carrefour des Entreprises.

Les autorités ont instauré un numéro d'entreprise unique devant être la clé unique d'identification des entreprises

Depuis le 1er juillet 2003, le numéro d'entreprise remplace le numéro de registre de commerce, le numéro du Registre National des Personnes Morales et le numéro de la TVA. Quant au numéro d'employeur ONSS, il est provisoirement maintenu.

Pour les entreprises créées avant le 1er juillet 2003, le numéro d'entreprise est le numéro de TVA ou le numéro de Registre National des

Personnes Morales (numéro RNPM) précédé d'un 0.

Les entreprises créées après le 1er juillet 2003 se voient attribuer un nouveau numéro d'entreprise commençant par 0

A partir du 1er janvier 2005, l'utilisation du numéro d'entreprise sera obligatoire dans les relations que les entreprises ont avec les autorités administratives et judiciaires, ainsi que dans les relations que ces dernières ont entre elles[334].

5.6.2. Law of 16 January 2003 on the Establishment of the Banque-Carrefour des Entreprises

Law of 16 January 2003 on the Establishment of the BCE "Loi portant création d'une Banque - Carrefour des Entreprises, modernisation du registre de commerce, création de guichets entreprises agréés et portant diverses dispositions"[335]

TITRE II. - Banque-Carrefour des Entreprises

CHAPITRE 1er. - Création de la Banque-Carrefour des Entreprises

Art. 3. Il est créé au sein du Service public fédéral Economie, P.M.E., Classes moyennes et Energie un registre, dénommé « Banque-Carrefour des Entreprises ».

Ce registre associé à l'introduction du numéro unique d'entreprise a pour objectif, en application du principe de collecte unique de données, de permettre de simplifier les procédures administratives s'adressant aux entreprises ainsi que de contribuer à l'organisation plus efficace des services publics.

La Banque-Carrefour des Entreprises est chargée de l'enregistrement, de la sauvegarde, de la gestion et de la mise à disposition d'informations portant sur l'identification des entreprises conformément aux dispositions de la présente loi et aux législations ou aux réglementations qui autorisent la saisie originelle des données visées à l'article 6 par les autorités, administrations et services désignés en vertu de l'article 7.

Art. 4. Sont enregistrées dans la Banque-Carrefour des Entreprises, des informations relatives :

1° aux personnes morales de droit belge;

2° aux personnes morales de droit étranger ou international qui disposent d'un siège en Belgique ou qui doivent se faire enregistrer en exécution d'une obligation imposée par la législation belge;

3° à toute personne physique, morale ou toute association qui en Belgique :

- soit agit en qualité d'entreprise commerciale ou artisanale;

- soit est soumise à la sécurité sociale en tant qu'employeur;

- soit est soumise à la taxe sur la valeur ajoutée;

- soit exerce une profession intellectuelle, libre ou de prestataire de services, en qualité d'indépendant;

4° ainsi qu'aux unités d'établissement des personnes visées aux 1°, 2° et 3°, pour autant que l'enregistrement de cette unité d'établissement soit nécessaire pour l'exécution de la législation belge.

CHAPITRE 2. - Inscription dans la Banque-Carrefour des entreprises

Art. 5. Toute entreprise ou unité d'établissement visée à l'article 4, est enregistrée dans la Banque-Carrefour des Entreprises et se voit attribuer un numéro d'entreprise ou d'unité d'établissement lors de son inscription. Ce numéro constitue le numéro d'identification unique.

Art. 6. § 1er. L'inscription faite en vertu de l'article 5 contient les données suivantes :

1° le nom, la dénomination ou la raison sociale;

2° la désignation précise des différentes adresses, le cas échéant, du siège social de l'ent reprise et des différentes unités d'établissement en Belgique;

3° la forme juridique;

4° la situation juridique;

5° la date de création et la date de cessation de l'entreprise ou de l'unité d'établissement;

[334] http://mineco.fgov.be/redir_new.asp?loc=/enterprises/crossroads_bank/home_fr.htm, 1 February 2005.

[335] http://mineco.fgov.be/enterprises/crossroads_bank/pdf/law_BCE-KBO_fr_001.pdf, 1 February 2005.

6° les données d'identification des fondateurs, mandataires et fondés de pouvoir;

7° les activités économiques exercées par l'entreprise;

8° les autres données d'identification de base qui doivent être fournies au moment de la création de la personne morale ou en application du Titre III;

9° la mention des autorisations et licences dont dispose l'entreprise ou les qualités pour lesquelles cette dernière est connue auprès des différentes autorités, administrations et services;

10° les références aux documents concernant la personne morale déposées aux greffes des – tribunaux ainsi qu'aux comptes annuels et aux bilans déposés à la Banque nationale de Belgique.

§ 2. Le Roi peut, après avis du comité de surveillance visé à l'article 27 et par arrêté délibéré en Conseil des Ministres, compléter les données énumérées au § 1er par d'autres données nécessaires à l'identification des entreprises ou d'intérêt commun à plusieurs services publics.

§ 3. Toute modification apportée aux données visées aux §§ 1er et 2 doit être mentionnée dans la Banque-Carrefour des Entreprises, sans délai, avec indication de la date de prise d'effet et des services dont elle émane.

§ 4. Ces données sont conservées pendant trente ans à compter du jour de la perte de la personnalité uridique pour les personnes morales ou de la cessation définitive d'activité pour les autres titulaires d'inscription visés à l'article 4.

CHAPITRE 3. - Attribution et utilization des numéros d'entreprise et des numéros d'unité d'établissement de la Banque-Carrefour des Entreprises

Art. 10. Le numéro d'entreprise et le numéro d'unité d'établissement attribués au moment de l'inscription dans la Banque-Carrefour des Entreprises sont, immédiatement après leur attribution, communiqués à l'entreprise par les autorités, administrations et services désignés en vertu de l'article 7, alinéa 1er.

Le Roi fixe les règles d'attribution, les modalités de délivrance ainsi que la composition du numéro d'entreprise et du numéro d'unité d'établissement.

Art. 11. L'utilisation du numéro d'entreprise est obligatoire dans les relations que les entreprises ont avec les autorités administratives et judiciaires, ainsi que dans les relations que ces derniers ont entre eux.

Les autorités, administrations et services désignés en vertu de l'article 7, alinéa 1er, prennent les mesures nécessaires afin que le numéro d'entreprise et d'unité d'établissement constitue, aux fins d'appliquer la collecte unique de données, une clé donnant accès tant aux données reprises dans la Banque-Carrefour des Entreprises qu'à celles reprises dans les répertoires et fichiers automatisés qu'ils gèrent, sans préjudice des dispositions légales et réglementaires régissant l'accès à ces données.

5.6.3. Royal Decree of 2 April 2003

The Royal Decree of 2 April 2003 "Arrêté royal du 2003-04-02"[336]

Article 1er. Les articles 1er à 10, alinéa 1er, 11 à 16, 18 à 36, 38 à 52, 54 à 58, de la loi du 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique, modifiée par la loi du 2 mai 2002 sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations et la loi du 16 janvier 2003 portant création d'une Banque-Carrefour des Entreprises, modernisation du registre de commerce, création de guichets-entreprises agréés et portant diverses dispositions entrent en vigueur au jour de l'entrée en vigueur des titres 3 et 4 de la loi du 16 janvier 2003 portant création d'une Banque-Carrefour des Entreprises, modernisation du registre de commerce, création de guichetsentreprises agréés et portant diverses dispositions et au plus tard le 1er janvier 2004.

Art. 2. Les articles 17, 37 et 53 de la loi du 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique, modifiée par la loi du 2 mai 2002 sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations et la loi du 16 janvier 2003 portant création d'une Banque-Carrefour des Entreprises, modernisation du registre de commerce, création de guichets-entreprises agréés et portant diverses dispositions entrent en vigueur pour la première fois à l'exercice comptable commenc¸ant le 1er janvier 2004 ou après cette date.

[336] http://mineco.fgov.be/enterprises/crossroads_bank/pdf/law_BCE-KBO_016.pdf, 3 February 2005.

Art. 3. L'article 10, alinéa 2, de la loi du 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique, telle que modifiée par les lois du 2 mai 2002 sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations, et du 16 janvier 2003 portant création d'une Banque-Carrefour des Entreprises, modernisation du registre de commerce, création de guichets-entreprises agréés et portant diverses dispositions entre en vigueur le 1er janvier 2005.

Art. 4. Les articles 1er à 4, 42 à 65, 67 à 68 de la loi du 2 mai 2002 sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations entrent en vigueur au jour de l'entrée en vigueur des titres 3 et 4 de la loi du 16 janvier 2003 portant création d'une Banque-Carrefour des Entreprises, modernisation du registre de commerce, création de guichets-entreprises agréés et portant diverses dispositions et au plus tard le 1er janvier 2004.

Art. 5. Les associations sans but lucratif, les fondations et les associations internationales sans but lucratif ayant acquis la personnalité juridique avant le 1er janvier 2004 disposent, à compter de cette date, d'un délai d'un an pour se conformer aux obligations résultant des articles 2, 2bis, 2ter, 3bis, 3ter, 10, alinéa 1er, 11, 13, 13bis, 16, 26,

26novies, 28, 31, 32, 33, 47, 48, 51 et 54 de la loi 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique, telle que modifiée par la loi du 2 mai 2002 sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations.

Art. 6. Les associations sans but lucratif, les fondations et les associations internationales sans but lucratif ayant acquis la personnalité juridique avant le 1er janvier 2004 disposent, à compter du 1er janvier 2004, d'un délai d'un an pour se conformer aux obligations résultant des articles 17, 37 et 53 de la loi 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique, telle que modifiée par la loi du 2 mai 2002 sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations.

Art. 7. Les associations sans but lucratif ayant acquis la personnalité juridique avant le 1er janvier 2004 disposent, à compter du 1er janvier 2005, d'un délai d'un an pour se conformer aux obligations résultant de l'article 10, alinéa 2 de la loi 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique, telle que modifiée par la loi du 2 mai 2002 sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations.

5.6.4. Code of deontology for non-profit associations

Code of Deontology for non-profit associations "Code de déontologie des associations sans but lucratif faisant appel à la générosité du public"[337]

Préambule

Les associations sociales et humanitaires sont profondément attachées au soutien volontaire des personnes qui leur permettent de mieux réaliser leur objet social. Pour favoriser des solidarités plus actives et plus responsables, il leur parait indispensable :

d'encourager la générosité du public, qu'elles sollicitent de multiples manières ;

d'informer les donateurs de l'utilité sociale des actions qu'elles mènent et du respect des intentions annoncées lors de l'affectation des fonds qu'elles collectent ;

de veiller au caractère éthique qui régit les rapports entre les dites associations et leur prestataires de services ;

d'assurer en cette matière un rôle de lobbying auprès des pouvoirs publics concernant les directives que ceux-ci sont amenés à prendre à leur égard.

A cette fin, les organisations sociales et humanitaires sous-signées ont défini des règles fondamentales de déontologie, rassemblées dans le présent Code qu'elles s'engagent à respecter, selon les modalités décrites ci-après.

Les engagements qu'elles confirment ainsi leur paraissent de nature à générer un climat de confiance et de transparence favorable à la collecte par les associations des moyens

[337] http://www.vef-aerf.be/article.php3?id_article=1, 7 February 2005.

nécessaires au développement de leur activité d'utilité sociale.

LA TRANSPARENCE FINANCIERE

Principes

Les associations signataires du présent Code s'engagent à :

1.1. tenir une comptabilité régulière et établir des documents comptables annuels tels que prévus par la loi ;

1.2. si cette comptabilité n'est pas d'office annuellement vérifiée par un expert comptable agréé ou un réviseur d'entreprise, autoriser, en cas de plainte écrite auprès de l'A.S.B.L. "AERF", dont question au point 5, un expert désigné par celle-ci à avoir accès aux pièces comptables et à vérifier leur régularité, et ce aux frais de l'association ;

1.3. faciliter la compréhension de ces documents comptables par un commentaire clair et synthétique présentant l'origine et l'utilisation de leurs ressources ;

1.4. endre accessible ces documents comptables et leur commentaire synthétique grâce, soit à leur publication dans l'organe périodique de l'association, soit à leur diffusion auprès des donateurs par mailing, soit à la convocation de ces derniers à une réunion d'information, ou par tout autre moyen approprié.

Elaboration de ces principes dans le Code

Le droit à l'information

Donateurs, collaborateurs et employés ont un droit à l'information. Les membres de l'AERF ont un devoir d'information.

Ceci implique que donateurs, collaborateurs et employés seront informés automatiquement (versus à leur demande), au moins durant l'année comptable qui suit le don, de l'utilisation des fonds récoltés pour la réalisation du but social.

Cet automatisme signifie que les ayant droits ne doivent pas solliciter expressément cette information auprès de l'organisation concernée. Cette information peut être rendue disponible, e.a. par le bulletin, le site internet, un mailing,... ou tout autre moyen accessible aux personnes concernées et dont elles sont ou seront informées.

Pour éviter que tous les donateurs doivent recevoir un courrier supplémentaire, il est admis que les "documents offerts" (y compris les explications) soient au moins disponibles sur le site internet. Si aucun envoi distinct n'est prévu, l'organisation reprendra les "documents offerts" dans son bulletin (s'il existe) et les rendra accessible - avec les "documents accessibles" - au siège de l'association.

La seule présence aux greffes ne sera pas considéré comme une mesure suffisante. La liste complète des droits à l'information sera disponible auprès de l'association et de l'AERF. Le Comité de surveillance appréciera la méthode utilisée.

Les membres de l'AERF sont exemptés de ce devoir d'information envers leurs membres, collaborateurs, employés et donateurs, à condition que ces derniers renoncent par écrit à leur droit.

Quels documents sont rendus publics?

Seront au moins offerts à tous les donateurs, collaborateurs et employés, les documents suivants, appelés 'documents offerts' :

bilan des avoirs et dettes des deux dernières années (sauf pour les organisations récoltant moins de 25.000 € par an) ;

compte des recettes et dépenses de la dernière année (compte de résultats), de manière analytique, sauf si inadéquat et sauf pour les organisations récoltant moins de 25.000 € par an)

Les membres de l'AERF s'engagent à donner un aperçu vrai et sincère du patrimoine et du résultat d'exploitation de l'organisation.

Les comptes seront accompagnés d'un commentaire clair et compréhensible, y compris pour des néophytes, sur l'origine et l'affectation des fonds.

A présenter la demande expresse de donateurs, collaborateurs et employés, les 'documents accessibles':

Compte d'exploitation (regroupant les postes comptables par groupes de deux chiffres);

une explication de l'organisation des postes utilisés, avec une attention particulière pour les recettes et dépenses liées à la récolte de fonds (information, publicité,...);

le résultat global récolté net;

le rapport du réviseur ou expert comptable [1]

L'AERF laisse le libre choix à ses membres de communiquer ou non à la demande expresse des donateurs:

le budget

la tension salariale

la table d'amortissement

Présentation des informations

Les 'documents offerts': par publication, mailing, réunion d'information ou tout autre moyen approprié.

En ce qui concerne les 'documents accessibles', les ayant droits sont informés de leur droit à l'information. Les documents seront accessibles au siège de l'association et sur simple demande (par téléphone, courrier ou courrier électronique).

Les personnes concernées sont informées de leur droit à l'information, ex ante (à l'occasion de l'appel de fonds) ou ex post. Dans sa communication, l'organisation montre clairement son adhésion à l'AERF et, implicitement, de son engagement d'informer les donateurs de l'utilisation des dons récoltés. Cette communication ne doit pas reprendre de manière exhaustive tous les droits à l'information. Le label de l'AERF pourrait suffire.

LA RIGUEUR DES MODES DE RECHERCHE DE FONDS

Les associations signataires s'engagent à:

2.1. s'interdire de cautionner des initiatives commerciales dont les activités sont en contradiction avec leur objet social;

2.2. dans les relations avec les prestataires de service ou fournisseurs:

2.2.1. proscrire tout lien qui pourrait servir de caution à l'activité commerciale de ces prestataires et qui serait susceptible de compromettre la gestion désintéressée et autonome des associations;

2.2.2. conclure, lors de la commande d'un service, un contrat en bonne et due forme qui respecte le code de déontologie;

2.2.3. exiger des devis préalables à la réalisation des campagnes de collecte de fonds;

2.2.4. ne rémunérer les prestataires de services que sous forme d'honoraires préalablement convenus;

2.2.5. assumer le contrôle et la responsabilité du contenu des documents utilisés en vue de la récolte de fonds.

GESTION DES FICHIERS

Par fichier de donateurs, on entend le ou les fichiers de l'ensemble des personnes concernées par les différentes activités de récolte de fonds de l'association, de ses filiales de merchandising ou d'autres partenaires oeuvrant en son nom.

En ce qui concerne la gestion de ces fichiers, les associations signataires rappellent qu'elles s'engagent à respecter scrupuleusement la loi sur la vie privée et s'engagent à ce que:

3.1. l'accès au fichier des donateurs soit strictement limité aux personnes mandatées à cet effet, qui en garantissent la confidentialité;

3.2. les fichiers, qui sont la propriété des associations pour lesquelles ils ont été constitués, ne puissent être utilisés à des fins commerciales qui sortent du cadre de l'objet social;

3.3. l'achat ou la location d'adresses à des firmes spécialisées, ou l'échange d'adresses entre diverses associations n'implique aucun autre usage que l'envoi des messages d'information et/ou de récolte de fonds.

4. MESSAGES ET COMMUNICATIONS

Pratiques publicitaires faisant appel à la générosité du public [2]

Les communications des associations à vocation sociale ou humanitaire subissent actuellement un essor important. Parallèlement, beaucoup d'entreprises associent à la vente de leurs produits ou services une action humanitaire (tombola, sponsoring, marketing), Afin de ne pas faire appel abusivement la générosité du public et de ne pas le tromper, il est nécessaire que les messages informent clairement les destinataires, en précisant le nom de l'auteur et le but de la demande, ainsi que les modalités d'utilisation des fonds sollicités.

Les associations signataires s'engagent de manière générale à:

respecter leur objet social dans leurs appels à la générosité, conformément à leurs statuts;

ne pas introduire dans leurs demandes de soutiens financiers, des informations contenant des allégations, indications ou présentations fausses ou de nature à induire en erreur;

respecter la destination des dons des donateurs, conformément à l'appel qui leur a été adressé;

porter sur leurs documents ou publications toutes les mentions permettant d'identifier clairement l'association.

En outre, les associations signataires s'engagent à ce que les dispositions suivantes soient respectées:

1. LES MESSAGES

1.1. Les messages ne peuvent comporter aucune inexactitude, ambiguïté, exagération, etc., de nature à tromper le public sur le but réel de l'association, son organisation, ses modalités et résultats de son action ou l'utilisation des fonds, produits ou prestations sollicités.

1.2. Les messages qui font appel à la générosité du public doivent mentionner le nom de la personne ou la dénomination et la personnalité juridique de l'organisation qui organise l'appel ou qui en est bénéficiaire.

1.3.. Les messages qui font appel à la générosité du public doivent mentionner clairement la destination des fonds récoltés ou le moyen pour le public d'en prendre connaissance. Dans tous les cas, les responsables de l'appel veilleront à disposer d'une documentation pouvant répondre à toute demande d'information.

1.4. Si la publicité est faite pour une tombola, elle doit indiquer la date et la nature de l'autorisation obtenue conformément à l'article 7 de la loi du 31 décembre 1851 sur les Loteries.

2. DES MESSAGES SE REFERANT A LA PERSONNE HUMAINE

2.1. Lorsqu'une communication incite le public à envoyer des fonds, les messages personnalisés ayant pour but d'établir un lien direct entre les personnes demandant de l'aide et les futurs donateurs (par exemple : message écrit de la main d'un enfant, lettre de détresse jointe au message etc.) doivent être réservés aux cas précis où l'association a effectivement mis en place un lien de cette nature, sauf si le message indique clairement qu'il s'agit d'un cas fictif inspiré ou non de faits réels.

2.2. Les messages ne peuvent, tant par les textes que par ses illustrations, attenter à la dignité humaine, ni exploiter abusivement l'image de la détresse humaine, en veillant à ne pas heurter les sentiments des donateurs ou des bénéficiaires de l'aide.

Un message ne peut se référer à une personne, porter sa signature ou la présenter comme une caution ou un appui du sérieux de l'association qu'avec l'accord préalable et exprès de cette personne.

Lorsqu'il est fait référence à une personne connue d'une manière qui puisse être compris par le public comme une caution ou un appui, les qualités de la personne et son lien éventuel avec l'association doivent être indiqués.

2.4. La communication ne doit reproduire ou citer aucun témoignage, attestation ou recommandation qui ne soit véridique et rattachée à l'expérience de la personne qui la donne. L'utilisation de témoignages ou de recommandations périmées ou inapplicables pour d'autres raisons, est prohibée.

2.5. Tout message faisant appel à la générosité pour un projet déterminé, dans le temps et/ou l'espace, doit indiquer clairement les caractéristiques et modalités de l'action ou du projet.

COMMUNICATIONS SE REFERANT A DES ETUDES OU STATISTIQUES

3.1. Toute communication utilisant, d'une manière ou d'une autre, les résultats d'études ou statistiques, doit mentionner:

les sources d'information;

les dates de réalisation de l'étude.

3.2. Les citations de textes ou les références à des études, sorties de leur contexte, ne peuvent être détournées de leur sens initial.

[1] Obligatoire à partir de 2003 et toujours excepté les organisations récoltant moins de 25.000 € par an.

[2] Ce chapitre du Code de Déontologie a été adopté par le Jury d'Ethique Publicitaire (JEP) du Conseil de la Publicité. Le Jury limite désormais ses compétences aux pratiques publicitaires "de masse", excluant les mailings et autres appels individualisés.

5.6.5. Tax law of 10 April 1992

Tax law of 10 April 1992 "Code des impôts sur les revenus 1992 coordonné le 10 avril 1992"[338]

Art. 181. Ne sont pas non plus assujetties à l'impôt des sociétés, les associations sans but lucratif et les autres personnes morales qui ne poursuivent pas un but lucratif et :

1° qui ont pour objet exclusif ou principal l'étude, la protection et le développement des intérêts professionnels ou interprofessionnels de leurs membres;

2° qui constituent le prolongement ou l'émanation de personnes morales visées au 1°, lorsqu'elles ont pour objet exclusif ou principal, soit d'accomplir, au nom et pour compte de leurs affiliés, tout ou partie des obligations ou formalités imposées à ceux-ci en raison de l'occupation de personnel ou en exécution de la législation fiscale ou de la législation sociale, soit d'aider leurs affiliés dans l'accomplissement de ces obligations ou formalités;

3° qui, en application de la législation sociale, sont chargées de recueillir, de centraliser, de capitaliser ou de distribuer les fonds destinés a l'octroi des avantages prévus par cette législation;

4° qui ont pour objet exclusif ou principal de dispenser ou de soutenir l'enseignement;

5° qui ont pour objet exclusif ou principal d'organiser des foires ou expositions;

6° qui sont agréées en qualité de service d'aide aux familles et aux personnes âgées par les organes compétents des Communautés;

7° (qui sont agréées pour l'application de l'article 104, 3°, b, d, e, h, i et j, 4° et 4°bis, ou qui le seraient, soit si elles en faisaient la demande, soit si elles répondaient à toutes les conditions auxquelles l'agrément est subordonne, autres que celle d'avoir, suivant le cas, une activité à caractère national ou une zone d'influence s'étendant à l'une des communautés ou régions ou au pays tout entier

Art. 182. Dans le chef des associations sans but lucratif et des autres personnes morales qui ne poursuivent pas un but lucratif, ne sont pas considérées comme des opérations de caractère lucratif :

1° les opérations isolées ou exceptionnelles;

2° les opérations qui consistent dans le placement des fonds récoltés dans l'exercice de leur mission statutaire;

3° les opérations qui constituent une activité ne comportant qu'accessoirement des opérations industrielles, commerciales ou agricoles ou ne mettant pas en oeuvre des méthodes industrielles ou commerciales

Art. 220. Sont assujettis à l'impôt des personnes morales :

1° l'Etat, les Communautés, les Régions, les provinces, les agglomérations, les fédérations de communes, les communes, les centres publics d'aide sociale, (...) ainsi que les établissements culturels publics; 2° les personnes morales qui, en vertu de l'article 180, ne sont pas assujetties à l'impôt des sociétés;

3° les personnes morales qui ont en Belgique leur siège social, leur principal établissement ou

[338] http://www.juridat.be/cgi_loi/loi_F.pl?cn=1992041032, 7 February 2005.

leur siège de direction ou d'administration, qui ne se livrent pas à une exploitation ou à des opérations de caractère lucratif ou qui ne sont pas assujetties à l'impôt des sociétés conformément à l'article 181 et 182.

6. Denmark

6.1. Law on Associations

The commercial associations are governed by the General Foundations Act. Besides, there is no specific law governing the non-profit associations.

6.2. Law on Foundations

General Foundation Act covering foundations and certain associations of 6 June 1984

"Loi no 300 du 6 juin 1984 sur les fondations et certaines associations"[339]

(modifiée par les lois no 350 du 6 juin 1991, no 187 du 23 mars 1992 et no 6 698 du 11 août 1992)

Chapitre 1 - DOMAINE D'APPLICATION DE LA LOI

Art. 1

Alinéa 1. Les chapitres 1-12 de la présente loi sont applicables aux fondations, legs et autres institutions propriétaires (fondations).

Alinéa 2. La loi ne s'applique pas :

1) aux fondations créées soit par une loi ou en vertu d'une telle loi, soit par une convention internationale entre le Danemark et un autre Etat et étant soumises au contrôle de l'un de ces Etats ;

2) aux fondations avec lesquelles une municipalité ou une commune départementale a contracté un engagement afin qu'elles remplissent les obligations de la municipalité ou de la commune départementale aux termes de la loi sur l'aide sociale, si toutefois la fondation n'a pas d'autres attributions;

3) aux institutions propriétaires relevant de 17Eglise nationale, des congrégations religieuses reconnues légalement ou des établissements d'enseignement autorisés par I'Etat, si toutefois elles n'ont pas d'autres attributions en dehors de leur but principal ;

4) aux fondations concernées par la loi sur les fondations à but lucratif;

5) aux fondations qui, aux termes de l'article l er alinéas 4 et 5, de la loi sur les fondations à but lucratif ne sont pas concernées par la présente loi:

6) aux institutions propriétaires dont l'autorisation et les subventions publiques dépendent de l'inspection et du contrôle économique d'un autre service public aux termes d'une autre législation, ou de dispositions émises en vertu d'une autre législation ;

7) aux institutions propriétaires dont la gestion est financée essentiellement par des fonds de 1'Etat ou d'une municipalité, et qui sont soumises à une inspection publique, s'il est stipulé dans les statuts de l'institution qu'une autorité publique doit décider de l'utilisation des biens de l'institution en cas de dissolution de celle-ci.

Alinéa 3. L'administration sous l'autorité de laquelle une fondation est placée peut décider son exclusion entière ou partielle du champ d'application de la présente loi si cette fondation est soumise par ailleurs au contrôle de 1'Etat ou d'une municipalité.

Alinéa 4. La présente loi ne s'applique pas aux fondations dont les actifs ne dépassent pas 250 000 couronnes. Les dispositions stipulées à l'article 6, alinéa 1, l'article 7 et à l'article 8, alinéa 1, point 2, et au chapitre 9 restent toutefois valables pour ces fondations.

Alinéa 5. Les règles stipulées aux articles 38 et 59 s'appliquent aussi aux fondations qui, aux termes de l'alinéa 3, en sont exceptées. La décision à cet effet incombe à l'autorité de contrôle concernée.

Chapitre 2 - NOM

Alinéa l Le chapitre 13 de la loi s'applique :

1) aux confédérations patronales, aux syndicats et aux autres associations professionnelles qui ont pour but principal de protéger les intérêts économiques du groupe professionnel auquel appartiennent leurs membres ;

2) aux associations dont les moyens financiers consistent principalement en cotisations des associations nommées au no 1, et qui ont pour but de protéger les intérêts économiques du groupe professionnel auquel appartiennent leurs membres.

[339] Alfandari/Nardone, p. 98 – 106.

Alinéa 2. La présente loi ne s'applique pas aux associations dont les actifs ne dépassent pas 250 000 couronnes, ni aux associations relevant d'une municipalité ou d'une commune départementale.

Art. 3

Alinéa 1. Toute fondation doit comporter dans sa dénomination le mot «fondation».

Alinéa 2. Le nom et le domicile (siège social) d'une fondation doivent être portés sur les lettres et les imprimés de la fondation.

Chapitre 3 - ENREGISTREMENT

(art. 4 et 5 abrogés)

Chapitre 4 - STATUTS

Art. 6

Alinéa 1. Pour toute fondation, il faut établir les statuts (acte de fondation) qui devront indiquer :

1) le nom de la fondation ;

2) la commune du Danemark où la fondation aura son domicile (siège social) ;

3) le but de la fondation;

4) le montant des actifs et du capital de la fondation lors de la création ;

5) les éventuels droits ou avantages particuliers attribués aux fondateurs ou à d'autres personnes;

6) le nombre des membres du conseil d'administration et la manière dont ils sont désignés ;

7) la reddition des comptes et les dates de l'exercice;

8) l'utilisation des recettes budgétaires.

Alinéa 2. Les statuts doivent, dans les trois mois après la création, être transmis à l'administration dont relève la fondation ainsi qu'à l'autorité fiscale de la commune où la fondation est domiciliée. Si le ou les fondateurs ne sont pas nommés dans les statuts, il faut en faire rapport en particulier. Toute information sur des modifications aux statuts doit être transmise à I'autorité fiscale avec la déclaration de revenu (cf. art. 15 de la loi sur l'imposition des fondations).

Art. 7 Alinéa 1. Les dispositions contenues dans un acte de fondation attribuant à une famille déterminée ou à certaines familles la priorité pour la distribution des biens d'une fondation n'ont pas d'effet légal dans leur contenu, dès l'instant que ce droit de priorité va plus loin qu'aux personnes en vie au moment de la fondation et s'étend jusqu'à une génération future.

Alinéa 2. La disposition stipulée à l'alinéa 1 est valable également pour les prescriptions d'un acte de fondation qui attribue à des membres d'une famille déterminée ou de certaines familles un droit de priorité pour occuper un poste défini ou pour percevoir autrement, par exemple sous forme de rémunération d'un travail, des prestations de la fondation ou d'une entreprise sur laquelle la fondation a pouvoir de décision. La charge de membre du conseil d'administration n'est pas soumise à cette règle.

Chapitre 5 - CAPITAL,

Art. 8

Alinéa 1. Une fondation doit au moment de sa création disposer d'un capital d'au moins 250 000 couronnes. Les actifs et le capital propre doivent se trouver en proportion raisonnable avec le but proposé.

Alinéa 2. Nonobstant la disposition de l'alinéa 1, point 1, l'administration peut dans certains cas autoriser la création d'une fondation ayant des actifs de moins de 250 000 couronnes.

Alinéa 3. La disposition de l'alinéa 1, point 1, ne s'applique pas aux fondations créées avant le 1er janvier 1985.

Art. 9

Alinéa 1. Le conseil d'administration d'une fondation ne peut, sans l'approbation de l'autorité dont relève la fondation, distribuer :

1) les actifs existant au moment de la création de la fondation ou ce qui en tient lieu ;

2) les actifs qui par suite sont attribués à la fondation sous forme d'héritage ou de don ou de ce qui en tient lieu à moins que le testataire ou le donateur ait décidé que ces actifs seront distribués ;

3) les actifs correspondant à un excédent budgétaire mis en réserve pour la consolidation du capital de la fondation.

Alinéa 2. Nonobstant la disposition prévue à l'alinéa 1, le conseil d'administration d'une fondation peut, sans autorisation de l'autorité dont elle relève, distribuer les actifs correspondant aux bénéfices nets qui, aux termes de la loi sur les bénéfices sur les corn de change, sont à inclure dans le décompte du revenu imposable de la fondation. La décision du conseil d'administration de distribuer ces actifs doit être prise dans les six mois qui précèdent la fin de l'exercice. Par ailleurs, l'article 29 alinéa 1 est applicable de façon analogue.

Alinéa 3. Les actifs mentionnés à l'alinéa 1 ne peuvent être transférés ou hypothéqués que selon les règles fixées par le ministre de la Justice ou avec l'approbation de l'autorité dont relève la fondation (voir toutefois I'alinéa 2).

Alinéa 4. La limitation mentionnée aux alinéas 1 et 3 du droit de disposer des actifs doit être assurée autant que possible par annotation, inscription hypothécaire ou autrement.

Alinéa 5. Dans les statuts, il peut être stipulé que les actifs énumérés à l'alinéa 1 sont à distribuer dans un laps de temps bien précis. A moins d'autres dispositions précisées dans les statuts, les biens d'une fondation doivent être placés selon des règles fixées par le ministre de la Justice. Les biens de la fondation peuvent demeurer placés sous la forme dans laquelle ils ont été donnés ou légués (faisant partie d'une succession).

Chapitre 6 - DIRECTION

Art. 11

Alinéa 1. Une fondation est dirigée par un conseil d'administration. Le conseil ne peut être composé de moins de trois membres ou d'une seule personne juridique ou d'une unité collective qu'après l'accord de l'autorité dont relève la fondation.

Alinéa 2. Une liste des membres du conseil doit dans un délai maximum de trois mois après la création de la fondation être transmise à l'autorité dont relève la fondation ainsi qu'à l'autorité fiscale de la commune où la fondation est domiciliée. Toute information sur des modifications à la composition du conseil doit être transmise à l'autorité fiscale avec la déclaration de revenus (cf. art. 15 de la loi sur l'imposition des fondations).

Alinéa 3. Le conseil peut engager un ou plusieurs directeurs.

Alinéa 4. Les dispositions stipulées aux articles 12 à 17 ne trouvent pas application lorsque le conseil d'une fondation consiste en une personne juridique ou en une unité collective.

Art. 12

Alinéa 1. Les membres du conseil et les directeurs d'une fondation doivent être majeurs. Les directeurs et au moins la moitié des membres du conseil doivent être domiciliés au Danemark, à moins que l'autorité administrative dont relève la fondation ne déroge à cette exigence ou si cette condition se trouve contraire à des obligations internationales.

Art. 13

Alinéa 1. Un membre du conseil d'administration peut à tout moment démissionner du conseil.

Alinéa 2. Un membre du conseil qui se trouve en état de faillite doit démissionner.

Alinéa 3. Un membre du conseil qui se rend coupable d'un acte qui le rend indigne de sa charge doit donner sa démission au conseil.

Alinéa 4. Un membre du conseil qui, en raison d'une maladie de longue durée ou d'une autre défaillance, s'est révélé hors d'état de remplir la tache de membre du conseil, ou qui s'est montré nettement inapte à cette fonction doit démissionner.

Art. 14

L'autorité administrative dont relève la fondation peut destituer un membre du conseil ou un directeur ne remplit pas les conditions énoncées à l'article 12. L'autorité administrative peut aussi destituer un membre du conseil qui ne remplit pas les exigences de l'acte de fondation ou des statuts, ou qui doit démissionner du conseil en vertu des règles fixées à l'article 13, alinéas 2 à 4.

Art. 15

Alinéa 1. Lors de la démission d'un membre du conseil, un nouveau membre est désigné en conformité avec les statuts.

Alinéa 2. Si la désignation n'est pas conforme aux statuts, elle sera effectuée par l'autorité administrative dont dépend la fondation.

Art. 16

Alinéa 1. Le fondateur, son conjoint ou les personnes liées à eux par une parenté ou une alliance en ligne directe ascendante ou descendante ou en ligne latérale aussi proche que des frères et soeurs, ne peuvent pas former la majorité au sein du conseil sans l'accord de l'autorité administrative dont relève la fondation.

Alinéa 2. Dans une fondation créée par une société, une personne qui est directement ou indirectement propriétaire de plus de la moitié du capital de la société donnant droit de vote ne peut pas, sans l'accord de l'autorité dont relève la fondation, constituer la majorité conjointement avec les personnes aussi proches de l'intéressé que stipulé à l'alinéa 1, tout comme ces dernières ne peuvent pas non plus former la majorité de la fondation sans avoir obtenu l'autorisation du ministre dont relève la fondation.

Art. 17

Les dispositions de la loi sur les membres du conseil s'appliquent également à leurs suppléants.

Art. 18

Alinéa 1. Les rémunérations versées aux membres du conseil d'administration ne doivent pas dépasser un montant considéré d'usage d'après le type de la charge et la somme du travail accompli.

Alinéa 2. Le ministre de la Justice peut établir des règle3 sur le montant de la rémunération des membres. Une rétribution non conforme à ces règles doit être approuvée par l'autorité administrative dont relève la fondation.

Alinéa 3. L'autorité dont relève la fondation peut diminuer une rémunération qu'elle juge trop élevée.

Art. 19

Un membre du conseil ou un directeur ne doit pas participer aux débats sur les questions relatives aux accords passés entre la fondation et lui-même ou concernant une action en justice contre lui-même, ou encore sur des accords entre la fondation et un tiers ou une poursuite contre un tiers, s'il a dans l'affaire un intérêt particulier qui pourrait être contraire à celui de la fondation.

Art. 20

Alinéa 1. Le président d'un conseil d'administration doit veiller à ce que le conseil se réunisse quand cela s'impose, et doit s'assurer que tous les membres soient convoqués.

Alinéa 2. Le conseil peut délibérer valablement lorsque la moitié des membres ou un nombre plus élevé stipulé dans les statuts sont présents. A moins que les statuts l'aient prévu autrement, le conseil prend les décisions par vote à la majorité simple. En cas d'égalité des voix, celle du président est décisive.

Alinéa 3. Un compte rendu des débats du conseil est rédigé et signé par tous les membres présents. Un membre ou un directeur qui n'est pas d'accord avec la décision du conseil a le droit de faire porter son opinion sur le compte rendu. Le conseil doit veiller à ce que le compte rendu soit bien conservé.

Art. 21

Le conseil d'une fondation ne peut qu'avec le consentement de l'autorité administrative dont relève la fondation prendre des dispositions ou intervenir dans la prise de décisions extraordinaires risquant d'être en contradiction avec les statuts.

Chapitre 7 – COMPTES ANNUELS ET VERIFICATION

Art. 22

Alinéa 1. Toute fondation doit rendre des comptes annuels, rédigés conformément aux bons usages de la comptabilité.

Alinéa 2. Les comptes annuels sont signés par le conseil et remis au registre des fondations dans le six moins qui suivent la clôture de l'exercice.

Alinéa 3. Le ministre de la Justice peut fixer des règles stipulant que les fondations dont le capital propre ne dépasse pas 200 000 couronnes, ne sont pas obligées, sauf demande expresse, de soumettre leurs comptes annuels au registre.

Art. 23

Alinéa 1. Le conseil d'administration doit veiller à ce que les comptes de la fondation soient soumis à vérification, et qu'à tout moment un ou plusieurs vérificateurs soient désignés.

Alinéa 2. Si la fondation avait disposé pendant l'exercice précédent d'un capital propre de 3 millions de couronnes ou plus, il faut qu'au moins un des vérificateurs soit un expert-comptable autorisé par 1'Etat ou enregistré. Pour les autres fondations, l'autorité dont relève la fondation peut exiger qu'au moins un des vérificateurs soit autorisé par l'Etat ou enregistré.

Alinéa 3. Le conseil d'administration doit informer l'autorité du nom du vérificateur dans les trois moins qui suivent la désignation de celui-ci. Si le vérificateur n'est pas un expert-comptable autorisé ou enregistré, il faut joindre à cette information une déclaration signée par le vérificateur affirmant qu'il s'engage par sa vérification à veiller à ce que les dispositions de la loi, les règles fixées par la loi ainsi que les statuts de la fondation soient respectés.

Art. 24

Alinéa 1. Le vérificateur des comptes doit être majeur, être domicilié au Danemark, à moins que le ministre concerné ne déroge à cette exigence, ou si elle est en contradiction avec des règles internationales.

Alinéa 2. Le vérificateur des comptes ne doit être :

1) ni un membre du conseil ou de la direction de la fondation ;

2) ni une personne en relation de dépendance vis-à-vis de la fondation, des membres des son conseil ou de sa direction, ou vis-à-vis des employés chargés de la comptabilité, du contrôle de celle-ci ou de l'administration des biens ;

3) ni une personne apparentée soit au conseil ou à la direction de la fondation, soit aux employés cités à l'article 2, par les liens du mariage, du concubinage, d'une parenté ou alliance en ligne directe ascendante ou descendante ou même latéralement aussi proche que des frères ou sœurs.

Alinéa 3. Un vérificateur des comptes peut être destitué par l'autorité administrative dont relève la fondation, s'il ne remplit pas les exigences stipulées à l'article 13, alinéas 2-4, ou s'il ne satisfait pas aux conditions énoncées aux alinéas 1 et 2.

Art. 25

Alinéa 1. Le vérificateur des comptes doit revoir les comptes annuels conformément aux bons usages de l'expertise comptable et à ce titre procéder à un dépouillement critique des pièces relatives à la comptabilité de la fondation et à sa situation générale. Le vérificateur doit se conformer aux exigences relatives à la vérification qui lui sont imposées par l'autorité administrative chargée de la fondation.

Alinéa 2. Le conseil et la direction doivent donner toute facilité au vérificateur pour faire les recherches qu'il juge nécessaires et doivent veiller à ce qu'il obtienne les informations et le soutien utiles dans l'exercice de sa mission.

Alinéa 3. Le vérificateur doit certifier par un émargement sur les comptes annuels qu'ils ont bien été vérifiés. Cet émargement doit contenir toute information sur la vérification ainsi que les remarques éventuelles auxquelles elle a donné lieu.

Alinéa 4. Si la vérification a donné lieu à des observations, ou si le vérificateur trouve à redire à la situation de la fondation, il doit en faire état auprès de l'autorité dont relève la fondation.

Art. 26

Un vérificateur qui entre en service doit s'adresser au vérificateur sortant pour qu'il l'informe - comme il en a l'obligation- des motifs de sa démission.

Art. 27

La disposition de la présente loi relative aux vérificateurs des comptes est aussi valable pour leurs suppléants.

Art. 28

Alinéa 1. Les articles 23 à 25 ne s'appliquent pas aux fondations soumises à une vérification par 1'Etat ou par une commune : le vérificateur doit toutefois, aux termes de l'article 25, alinéa 4, informer l'autorité dont relève la fondation sur la situation de celle-ci.

Alinéa 2. L'article 23 n'est pas applicable si un avocat s'est chargé d'établir les comptes de la fondation et de vérifier la situation mentionnée à l'article 25, alinéa 1. Par analogie, les articles 24 à 27 ne s'appliquent pas à l'avocat concerné.

Alinéa 3. Les articles 23 et 24 ne sont pas applicables dans les cas où un service administratif autorisé s'est chargé des missions mentionnées à l'alinéa 2. Par analogie les articles 25 et 26 s'appliquent au service administratif concerné.

Chapitre 8 – DISTRIBUTION ET UTILISATION DES BENEFICES

Art. 29

Alinéa 1. Après la déduction des mises en réserve aux termes de l'alinéa 2, il incombe au conseil de la fondation d'utiliser les bénéfices conformément aux buts fixés par les statuts. Cette utilisation peut être reportée à un exercice ultérieur, si la réalisation du but de la fondation le recommande.

Alinéa 2. Le conseil peut opérer des prélèvements raisonnables sur l'excédent de l'année afin de consolider le capital de la fondation. Le ministre de la Justice peut établir des règles détaillées à ce sujet.

Art. 30

Alinéa 1. Si la distribution conformément au but fixé se trouve en nette disproportion avec les moyens financiers de la fondation, l'autorité administrative chargée de la fondation peut recommander au conseil d'envisager une augmentation ou une diminution de la distribution.

Alinéa 2. Si l'on juge que le montant de la distribution risque de violer les statuts, l'autorité administrative dont relève la fondation peut, par des négociations avec le conseil, lui recommander de prendre les dispositions nécessaires en vue d'une augmentation ou d'une diminution de la distribution.

Art. 31

Alinéa 1. Le conseil ne peut attribuer aux fondateurs, aux membres du conseil, aux vérificateurs des comptes, aux directeurs ainsi qu'aux personnes occupant un poste de direction dans la fondation d'autres prestations qu'une rémunération qui ne dépasse pas ce qui est considéré d'usage d'après le type de la charge et la somme du travail accompli. La même règle vaut pour une personne liée par mariage ou concubinage à une des personnes citées ci-dessus.

Alinéa 2. Le conseil ne peut pas accorder ou cautionner des prêts aux personnes mentionnées à l'alinéa 1.

Chapitre 9 – MODIFICATIONS STATUTAIRES, ETC

Art. 32

Alinéa 1. Sur proposition du conseil et avec l'approbation du ministre de la Justice, l'autorité administrative dont relève la fondation peut permettre la modification d'une disposition des statuts. A ce titre il est possible d'autoriser la fusion d'une fondation avec d'autres fondations ou la dissolution, par distribution du capital, d'une fondation dont les biens ne sont pas proportionnés avec le but fixé.

Alinéa 2. Les dispositions stipulées à l'alinéa 1 trouvent application sans qu'il y ait à tenir compte du droit reconnu au conseil ou à d'autres de modifier les statuts.

Alinéa 3. Le ministre de la Justice peut établir des règles stipulant que certaines dispositions des statuts peuvent être modifiées par le conseil seul ou par le conseil avec l'accord de l'autorité administrative dont relève la fondation.

Art. 33

Alinéa 1. L'autorité dont relève une fondation peut, après consultation du conseil d'administration, décider qu'une disposition des statuts doit être modifiée si elle s'avère irréalisable ou peu conforme au but proposé.

Alinéa 2. Après consultation du conseil d'administration, l'autorité dont relève une fondation remplir le but fixé, peut décider, soit de sa fusion avec des autres fondations, soit de sa dissolution par distribution du capital.

Alinéa 3. L'autorité dont relève une fondation peut décider de la modification d'une disposition des ses statuts si celle-ci est contraire à la législation ou au document de création de la fondation.

Art. 34

Le ministre de la Justice peut établir des règles sur la procédure à suivre pour la dissolution ou la fusion des fondations.

Chapitre 10 - AUTORITÉ ADMINISTRATIVE SUR LES FONDATIONS

Art. 35 (abrogé)

Art. 36

L'autorité administrative sur les fondations est exercée aux termes de la présente loi par le ministre de la Justice.

Art. 37

L'autorité administrative dont relève une fondation peut exiger du conseil de la fondation, du vérificateur des comptes ou d'autres personnes connaissant la situation de la fondation, toute information jugée nécessaire pour assurer les missions prévues aux termes de la présente loi et, à ce titre, décider si tel ou tel fait relève de ses dispositions.

Alinéa 2. L'autorité administrative peut ordonner aux membres du conseil d'une fondation, à ses directeurs et aux vérificateurs des comptes de mettre en conformité avec la présente loi des faits contraires à ses dispositions ou aux prescriptions émises aux termes de la loi.

Art. 38

L'autorité administrative dont relève une fondation peut, après consultation du registre des fondations, transférer à celui-ci des missions qui lui incombaient aux termes de la présente loi.

Art. 39

Pour couvrir les frais d'administration de cette loi, un versement peut être demandé à chaque fondation (cf article 45, alinéa 1, no 3), dont le recouvrement peut se faire par voie de saisie.

Chapitre 11- DÉDOMMAGEMENT

Art. 40

Alinéa 1. Les membres du conseil ou les directeurs d'une fondation qui, pendant l'exercice de leur mission, ont délibérément ou par négligen-ce causé un dommage à la fondation sont tenus de la dédommager.

Alinéa 2. La disposition de l'alinéa 1 s'applique également aux vérificateurs des comptes. Si une société d'expertise comptable a été désignée comme vérificateur, la société est responsable conjointement avec l'expert-comptable qui a été chargé de la vérification.

Alinéa 3. Le montant du dédommagement peut être diminué dans la mesure du raisonnable, compte tenu du degré de culpabilité, de l'importance du dommage et des circonstances.

Art. 41

La décision d'intenter une action en justice contre des membres de conseil, des directeurs, des vérificateurs de comptes ou des tiers est prise par le conseil ou par l'autorité administrative dont relève la fondation.

Art. 42

Une poursuite en justice contre des membres du conseil, des directeurs ou des vérificateurs des comptes peut être intentée auprès du tribunal du lieu où la fondation est domiciliée.

Chapitre 12 - SANCTIONS ET DISPOSITIONS ADMINISTRATIVES, ETC.

Art. 43

Alinéa 1. Toute infraction à l'article 64, alinéa 2, à l'article 11, alinéa 2, à l'article 23, alinéa 1, alinéa 2, point 1, à l'article 259, alinéa 1, point 3, et à l'article 26 est sanctionnée d'une amende.

Alinéa 2. Sera sanctionnée d'une amende toute personne :

1) qui distribue des fonds en infraction à l'article 9, alinéas 1 et 2, à moins qu'une sanction plus sévère ne soit prévue aux termes d'une autre législation;

2) qui omet de se conformer à l'article 23, alinéa 2, point 2, à l'article 30, alinéa 2, à l'article 37, alinéa 2, ou à l'article 41 ;

3) qui omet de se conformer à l'article 25, alinéa 4;

4) qui omet de donner les informations en conformité avec l'article 37, alinéa 1.

Alinéa 3. Les infractions grossières ou répétées à l'article 18, alinéas 1 et 2, aux articles 21 et 31 sont punies d'une amende.

Alinéa 4. Les articles 144, 150-152 et 154-157 du Code pénal et civil s'appliquent également à toute personne désignée comme vérificateur des comptes aux termes de l'article 23, alinéa 1. En ce qui concerne les collaborateurs, les articles 144,152 et 155 de la même loi sont également applicables.

Art. 44

Un membre du conseil, un directeur ou un vérificateur des comptes qui dévoile sans justification des faits dont il a eu connaissance pendant l'exercice de sa mission sera puni d'une amende, à moins qu'une sanction plus sévère ne soi1 prévue par le Code pénal pour délit de droit commun.

Art. 45

Alinéa 1. Le ministre de la Justice peut établir des règles :

1) sur la transmission des statuts, des informations etc.;

2) sur le calcul du capital de la fondation dans le cas où celui-ci est entièrement ou partiellement versé en d'autres valeurs qu'en fonds liquides ;

3) sur les versements aux termes de l'article 39;

4) sur le relèvement des limites du capital prévues à l'article 1, alinéa 4, à l'article 8 ;

5) sur le contenu et la présentation des comptes annuels ;

6) sur le versement de frais pour la délivrance par l'autorité chargée des fondations de tous documents relatifs à la situation des dites fondations.

Alinéa 2. Dans les prescriptions émises aux termes de l'alinéa 1, points 1 et 5, une amende peut être fixée pour les infractions aux dispositions prévues par ces prescriptions.

Art. 46

Alinéa 1. Toute personne a le droit d'obtenir du service fiscal une copie des statuts et des comptes annuels d'une fondation ainsi que des informations sur la composition de son conseil d'administration. L'article 12 de la loi sur la publicité est également applicable ici.

Alinéa 2. Le ministre des Affaires fiscales établit après consultation du ministre de la Justice les règles sur le versement des frais pour la délivrance des copies et des informations mentionnées à l'alinéa 1.

Chapitre 13 - RÈGLES RELATIVES À CERTAINES ASSOCIATIONS

Art. 47 (abrogé)

Art 48

Alinéa 1 . Toute association doit avoir des statuts qui doivent contenir les informations suivantes :

1) le nom de l'association

2) la commune du Danemark où l'association aura son domicile (siège social) ;

3) le but de l'association ;

4) le nombre des membres de la direction et la manière dont ils sont désignés ;

5) les relations mutuelles entre les membres, leur adhésion et démission de l'association ;

6) les engagements des membres quant aux obligations de l'association ;

7) la reddition des comptes et les dates de I'exercice ;

8) la fin d'activité de l'association.

Alinéa 2. Les statuts doivent être transmis à l'autorité fiscale de la commune du domicile de l'association dans un délai maximum de trois moins après la création de l'association. Les modifications aux statuts doivent être transmises avec la déclaration de revenues (cf. Art. 15 de la loi sur l'imposition des fondations).

Art. 48 a

Si les actifs d'une association comme celles dont question dans l'art. 2, alinéa 1, sont relevés de 250 000 Couronnes ou d'un montant inférieur, à une somme supérieure à 250 000 couronnes (cf. Art. 2, al. 2) la direction doit dans un délai maximum de trois mois transmettre à l'autorité fiscale de la commune du domicile de l'association les statuts et une liste des membres de la direction.

Art. 49

Alinéa 1. Toute association doit désigner un conseil ou une autre instance dirigeante.

Alinéa 2. Une liste des membres de la direction doit être transmise à l'autorité fiscale de la commune du domicile de l'association au plus tard dans les trois moins qui suivent la création de l'association ; une information sur toute modification ultérieure de la composition de la direction doit être jointe à la déclaration des revenus (cf. Art. 15 de la loi sur l'imposition des fondations).

Art 50

Alinéa 1 . Toute association doit préparer des comptes annuels conformément aux bons usages de la comptabilité.

Alinéa 2. Les comptes annuels doivent être signés dans les six mois qui suivent la clôture de l'exercice.

Art 51

Alinéa 1. Toute association doit désigner un ou plusieurs vérificateurs des comptes. Si l'association disposait pendant l'exercice précédent de valeurs se montant à 3 millions de couronnes ou plus, un des vérificateurs au moins doit être un expert-comptable autorisé par 1'Etat ou enregistré.

Alinéa 2. Le vérificateur des comptes doit revoir les comptes annuels conformément aux bons usages de l'expertise comptable et, à ce titre, procéder à un dépouillement critique des pièces comptables de l'association et de sa situation générale.

Alinéa 3. La direction doit donner toute facilité au vérificateur pour faire les recherches qu'il juge nécessaires, et doit veiller à ce qu'il obtienne les informations et le soutien utiles pour l'exercice de sa mission.

Alinéa 4. Le vérificateur doit certifier par un émargement sur les comptes annuels qu'ils ont bien été vérifiés. Cet émargement doit contenir toute information sur la vérification ainsi que les remarques éventuelles auxquelles elle a donné lieu.

Art. 52

Pour couvrir les frais d'inscription, un versement peut être demandé à chaque association. Le recouvrement de ces frais peut se faire par voie de saisie.

Art. 53

(abrogé)

Art. 54

Toute infraction à l'article 48, alinéa 2, à l'article 48a et à l'article 49, alinéa 2, est sanctionnée par une amende.

Art. 55

Alinéa 1. Le ministre de la Justice peut fixer des règles :

1) sur la transmission des statuts et autres informations ;

2) sur les versements aux termes de l'article 53 ;

3) sur le calcul des actifs de l'association ;

4) sur le relèvement des limites du capital prévues à l'article 2, alinéa 2 et à l'article 48a ;

5) sur le contenu et la présentation des comptes annuels.

Alinéa 2. Dans les prescriptions émises aux termes de l'alinéa 1, no 1 et 5, une amende peut être fixée pour les infractions aux dispositions prévues par ces prescriptions.

Art. 56

Alinéa 1. Toute personne a le droit d'obtenir des autorités fiscales copie des statuts et des comptes annuels d'une association ainsi que des informations sur la composition du conseil ou de l'instance dirigeante d'une association. L'article 12 de la loi sur la publicité est également applicable.

Alinéa 2. Le ministre des Affaires fiscales fixe après consultation du ministre de la Justice les règles sur le paiement des frais, pour la délivrance de copies et d'informations mentionnée à l'alinéa 1.

Chapitre 14 DISPOSITIONS RELATIVES À L'ENTRÉE EN VIGUEUR DE LA LOI

Art. 57

Alinéa 1. La présente loi entrera en vigueur le ler janvier 1985. L'article 58 (cf les articles 52,53 et 55) entrera toutefois en vigueur le ler octobre 1984. L'article 32 (cf. l'article 36) trouvera application à partir du lendemain de la publication de

la loi dans le «Lovtidende» (Journal officiel danoise)

Alinéa 2. Les fondations et associations déjà existantes n'auront toutefois à se conformer aux articles 6 (al. l), 12 (al. 1), 23 (al. 2), 24 (al. 1 et 2), 48 (al. l), 51 (al. 1) que dans les deux ans qui suivent l'entrée en vigueur de la loi. Le ministre de la Justice pourra prolonger ce délai pour certaines fondations et associations.

Alinéa 3. Les articles 3,5,7 et 8, l'article 11, alinéa 1, point 3, et l'article 16 ne s'appliquent pas aux fondations créées avant l'entrée en vigueur de la présente loi. Pour ces fondations l'article 12 alinéa 2, ne trouve application que dans le cas de la désignation d'un membre du conseil.

Art. 58

Alinéa 1. Les associations mentionnées à l'article 2 alinéa 1, qui ont été fondées avant le 1er octobre 1984, devront être déclarées au registre pendant la période allant du 1er octobre 1984 au 1er décembre 1984.

Alinéa 2. Toute infraction à l'alinéa 1 sera sanctionnée par une amende.

Art 59

Les dispositions des statuts pour les fondations non enregistrées imposant à l'autorité chargée des fondations des missions qui après le 1er janvier 1992 ne sont plus mentionnées dans cette loi, sont supprimées, à moins que l'autorité en décide autrement. La suppression de ces dispositions ne doit pas nécessairement faire l'objet d'un émargement sur les statuts.

Art. 60

La loi no 213 du 31 mai 1983 relative à I'enregistrement des fondations est annulée.

Les fondations qui se sont déclarées au registre conformément à cette loi ne seront toutefois pas tenues a renouveler leur inscription

Art. 61

La loi n'est pas valable pour les îles Féroe ni pour le Groenland, mais pourra par ordonnance royale être mise en vigueur pour ces territoires avec les dérogations entraînées par les situations particulières de ces territoires.

6.3. Law on NPO

There is no specific law governing NPOs in Denmark.

6.4. Law on NGO

There is no law defining NGOs in Denmark, but the Danish International Development Assistance (Danida) gives a definition for NGOs for Development.[340]

Etablerede, danske organisationer,

For støtte til udviklingsprojekter gælder det at organisationen skal:

• være privat og have juridisk hjemsted og aktiviteter i Danmark. Formanden og hovedparten af bestyrelsesmedlemmerne skal være danske statsborgere eller udlændinge med fast opholdstilladelse i Danmark.,

• have eksisteret i mindst et år,

[340] www.um.dk/NR/rdonlyres/2C7965B2-B97D-48E7AF6C3AC4FD7D922F/0/nyGenerelleprincipperforstøttetiludviklingsprojekt.doc, 2 March 2005.

• have mindst 50 bidragydende medlemmer eller støttepersoner, med mindre der er tale om paraplyorganisationer,

• have godkendte vedtægter, og

• at dens regnskaber skal være underkastet revision.

…der arbejder fokuseret og specialiseret,

Den ansøgende organisation skal kunne dokumentere sit landekendskab og sin faglige kompetence og fremlægge klare beskrivelser af de sektormæssige, tematiske, geografiske, metodiske og målgruppemæssige valg, der tilsammen udgør organisationens fokus. Den danske NGO må have en sådan grad af specialisering, at den i hver enkelt indsats har kompetence til at vurdere og monitorere indsatsen både hvad angår strategi, sammenhæng med den samfundsmæssige helhed, det faglige indhold og de metoder, som indsatsen benytter sig af. Endvidere må den danske NGO være i stand til at uddrage og opsamle faglige erfaringer og bruge disse i det videre arbejde.

Eksempler på, hvordan især de store og mellemstore organisationer kan specialisere sig:

• Fokusering på en bestemt målgruppe er ikke i sig selv tilstrækkelig. En organisation, der f.eks. fokuserer på børn som målgruppe, har således ikke automatisk kompetence inden for alle områder, der vedrører børn, men må udvælge bestemte temaer eller sektorer, som organisationen har et særligt kendskab til. Samtidig kan den danske organisation i samarbejde med målgruppe og partnerorganisation identificere andre aktører, som kan være med til at løse de problemer, som ligger derudover.

• Det er heller ikke tilstrækkeligt alene at være eksperter i en metode som f.eks. problemafdækkende processer, da disse processer vil antage forskellige former afhængig af målgruppe og sektor.

• En bred sektortilgang vil i mange tilfælde heller ikke i sig selv være tilstrækkeligt. F.eks. dækker sektorer som landbrug, uddannelse, sundhed og miljø over vidt forskellige typer af indsatser og faglighed, som ikke garanterer en tilstrækkelig faglig viden inden for alle felter. Her må der, særligt i forbindelse med levering af serviceydelser, arbejdes med en større grad af specialisering eller et særligt tema, som kan sikre et fokus i organisationens aktiviteter. – f.eks. primær sundhedstjeneste, efteruddannelse af lærere, AIDS, lokal naturressourceforvaltning etc.

Såfremt organisationen mangler kompetence geografisk eller fagligt for på kvalificeret vis selv at kunne løfte indsatsten, kan organisationen indgå i et samarbejde med andre med en komplementær specialisering, så man sammen har den nødvendige kompetence (allianceprogram).

Udenrigsministeriet vil løbende vurdere NGO'ernes kernekompetencer ved at iværksætte kapacitetsanalyser og evalueringer af organisationerne samt gennemgange (reviews) af udvalgte NGO-aktiviteter. Disse gennemgange kan være tematiske eller geografiske og indeholde sammenlignende studier af flere NGO-projekter. De kan også iværksættes ud fra en interesse for et specielt område, som en eller flere danske NGO'er beskæftiger sig med, med det formål at indsamle informationer til brug for den faglige dialog med den danske NGO.

…som har den fornødne forvaltningsmæssige kapacitet,

Ved ansøgning om støtte til udviklingsprojekter skal NGO'en kunne sandsynliggøre sin forvaltningsmæssige kapacitet til at administrere støtten i henhold til Danidas retningslinjer. Der vil ikke kunne gives støtte til NGO'er, der har udestående regnskaber eller rapporteringer fra tidligere tilskud.

….og som er folkeligt forankrede i Danmark.

Folkelig forankring i Danmark er en nødvendig forudsætning for støtte til danske NGO-aktiviteter og vil indgå i Udenrigsministeriets konkrete vurdering af bevillingsansøgninger sammen med den øvrige vurdering af kvalitet og effekt af de påtænkte aktiviteter i udviklingslandene. Den folkelige forankring vægtes ud fra en helhedsvurdering af følgende aspekter:

• medlemsbasis: samlet antal medlemmer og støttepersoner (min. 50), antal medlemmer beskæftiget med ulandsarbejde, lokalforeninger og kollektive medlemmer,

• egetbidrag: medlemsbidrag/kontingent, frivillige bidrag, indsamlede midler, firmabidrag, overskud ved salg og arrangementer og værdien af frivillig arbejdskraft,

• kontaktflader i form af samarbejdsaftaler, netværk til ikke-ulandsspecifikke organisationer i det danske samfund,

• oplysningsvirksomhed i Danmark,

• aktiv involvering af danskere i ulandsarbejdet i Danmark: antal aktive medlemmer, antal frivillige involveret i fortalervirksomhed, oplysningsaktiviteter, indsamling og projektgennemførelse.

6.5. Law on other legal forms

There are no specific laws on other legal forms.

6.6. Other laws

6.6.1. Taxation Act for foundations

Taxation Act for Foundations "Bekendtgørelse af lov om beskatning af fonde og visse foreninger (Fondsbeskatningsloven)"[341]1)

Herved bekendtgøres lov om beskatning af fonde og visse foreninger (Fondsbeskatningsloven), jf. lovbekendtgørelse nr. 813 af 26. oktober 1997 med de ændringer, der følger af § 3 i lov nr. 888 af 3. december 1997, § 4 i lov nr. 1106 af 29. december 1997, § 3 i lov nr. 429 af 26. juni 1998, § 1 i lov nr. 430 af 26. juni 1998 og § 4 i lov nr. 434 af 26. juni 1998.

§ 1. Skattepligt i henhold til denne lov omfatter:

1) Fonde, der er omfattet af lov om fonde og visse foreninger eller af lov om erhvervsdrivende fonde, medmindre fonden er undtaget fra disse love.

2) Foreninger, der er omfattet af lov om fonde og visse foreninger, for så vidt foreningen ikke er skattepligtig efter nr. 3.

3) Foreninger, der er omfattet af lov om fonde og visse foreninger for så vidt angår:

a) arbejdsgiverforeninger og fagforeninger,

b) andre faglige sammenslutninger, hvis kapital er bestemt til anvendelse til understøttelse af medlemmer under faglig konflikt, samt

c) foreninger, hvis midler hovedsagelig hidrører fra de under litra a og b nævnte foreninger, såfremt foreningen har som et formål at understøtte virksomheder eller personer under faglig konflikt eller faktisk yder en sådan understøttelse.

4) Fonde og andre selvejende institutioner, der er oprettet i udlandet, Færøerne eller Grønland, hvis ledelsen har sæde her i landet. Dette gælder, uanset hvor fonden eller den selvejende institution eventuelt er indregistreret.

Stk. 2.2) Skattepligten efter stk. 1, nr. 1, omfatter ikke fonde omfattet af pensionsafkastbeskatningsloven.

§ 1 A. (Ophævet).

§ 2. Skattepligtens indtræden og ophør følger de for selskaber og foreninger m.v. gældende regler.

Stk. 2. Indtræder der en sådan ændring, at en fond eller en forening enten overgår fra beskatning efter selskabsskattelovens § 1, stk. 1, nr. 1-2 a og 3 a-6, til beskatning efter denne lov eller overgår fra beskatning efter denne lov til beskatning efter selskabsskattelovens § 1, stk. 1, nr. 1-2 a og 3 a-5 b, finder selskabsskattelovens § 5 C, stk. 1, tilsvarende anvendelse. Selskabsskattelovens § 5 C, stk. 2, finder tilsvarende anvendelse med hensyn til aktiver og passiver, der både før og efter overgangen er omfattet af beskatningen. Ved ændringer, der medfører, at beskatning skal ske efter andre regler i denne lov end hidtil, finder selskabsskattelovens § 5 C, stk. 2, tilsvarende anvendelse. §§ 16-21 A finder tilsvarende anvendelse med hensyn til andre aktiver og passiver. § 22 finder ligeledes tilsvarende anvendelse.

Stk. 3. Indtræder der en sådan ændring, at en fond eller forening overgår fra beskatning efter reglerne i denne lov til beskatning efter selskabsskattelovens § 1, stk. 1, nr. 3, finder selskabsskattelovens § 5 A tilsvarende anvendelse.

Stk. 4. Indtræder der en sådan ændring, at en fond eller forening overgår fra beskatning efter selskabsskattelovens § 1, stk. 1, nr. 3, til beskatning efter reglerne i denne lov, finder selskabsskattelovens § 5 B, stk. 1, tilsvarende anvendelse. §§ 16-22 finder ligeledes tilsvarende anvendelse.

Stk. 5. Ved indtræden eller ophør af skattepligt som følge af, at ledelsens sæde flyttes, finder de for selskaber og foreninger m.v. gældende bestemmelser om indgangsværdier og ophørsbeskatning tilsvarende anvendelse.

§ 3. Den skattepligtige indkomst for de i § 1, nr. 1, 2 og 4 nævnte fonde og foreninger opgøres efter skattelovgivningens almindelige for

[341] http://www.retsinfo.dk/_LINK_0/0&ACCN/A19980075529, 20 April 2005.

indregistrerede aktieselskaber gældende regler med de undtagelser, der følger af stk. 2 og 3 samt §§ 4-6.

Stk. 2. Indkomst ved erhvervsmæssig virksomhed medregnes i sin helhed ved opgørelsen efter stk. 1. Den øvrige samlede indkomst beskattes derimod alene i det omfang, den overstiger 25.000 kr., for foreninger som nævnt i § 1, nr. 2, dog 200.000 kr. Fradrag som nævnt i 2. pkt. foretages inden fradrag efter §§ 4-6. Såfremt indkomsten, efter at der er foretaget fradrag efter § 4, udviser underskud, kan den del af underskuddet, som svarer til det fradragsberettigede nettotab efter kursgevinstloven, fradrages i den skattepligtige indkomst i de fem efterfølgende indkomstår. Inden for denne periode kan fradraget dog kun overføres til et senere indkomstår, såfremt det ikke kan rummes i et tidligere års skattepligtige indkomst.

Stk. 3. Gaver til fonde omfattet af § 1, nr. 1 og 4, skal kun medregnes ved opgørelsen af den skattepligtige indkomst, hvis gaven skal anvendes til uddeling eller det i vedtægten er bestemt, at kapitalen i løbet af et nærmere fastsat tidsrum skal anvendes til uddeling. Gaver til fonde, i hvis vedtægter der tillægges medlemmer af bestemte familier fortrinsret til uddelinger fra fonden eller fortrinsret til at indtage bestemte stillinger m.v., jf. § 7 i lov om fonde og § 8 i lov om erhvervsdrivende fonde, medregnes ved opgørelsen af fondens skattepligtige indkomst, såfremt der er tale om en gave, hvorved en fonds grundkapital udvides. Af gaver, som ydes til stiftelse af fonde som nævnt i 2. pkt., svares en afgift på 20 pct., jf. dog 1. pkt.

Stk. 4. For de i § 1, nr. 3, omhandlede foreninger gælder reglerne i §§ 8 og 9.

§ 3 A. Såfremt en skattepligtig omfattet af kildeskattelovens § 1, dødsboskattelovens § 1, stk. 2, selskabsskattelovens § 1 eller fondsbeskatningslovens § 1 indskyder midler i en udenlandsk fond eller trust, som er stiftet eller oprettet i et land, hvor fonde eller truster beskattes væsentlig lavere end efter danske regler, svarer indskyderen en afgift på 20 pct. af indskuddet. Dette gælder dog kun den del af de årlige indskud, der overstiger 10.000 kr.

Stk. 2. Skatteministeren kan meddele indskydere, der er afgiftspligtige efter stk. 1, dispensation fra afgiften, såfremt indskyderen godtgør, at midlerne i den udenlandske fond eller trust anvendes i almenvelgørende eller på anden måde almennyttigt øjemed til fordel for en større kreds af personer.

Stk. 3. Indskud, der foretages af udenlandske selskaber og foreninger m.v., som kontrolleres, jf. selskabsskattelovens § 32, stk. 1, af en afgiftspligtig omfattet af stk. 1, anses for foretaget af den afgiftspligtige.

Stk. 4. Stk. 1-3 finder tilsvarende anvendelse på afgiftspligtige, som bliver fuldt skattepligtige efter en af de i stk. 1 nævnte bestemmelser, såfremt de tidligere har været omfattet af en af disse bestemmelser og inden for de sidste 5 år forud for den fulde skattepligts genindtræden har foretaget indskud i en udenlandsk fond eller trust som nævnt i stk. 1. Indskud anses i disse tilfælde for foretaget ved den fulde skattepligts genindtræden.

Stk. 5. En udenlandsk fond eller trust anses tillige for beskattet væsentlig lavere end efter danske regler, hvis der er indgået en aftale om skattesats eller beskatningsgrundlag med skattemyndighederne i den stat, hvori den er hjemmehørende, herunder efter bestemmelserne i en dobbeltbeskatningsoverenskomst, eller hvis skattereglerne i den pågældende stat er indrettet efter, hvor indskyderen er hjemmehørende.

Stk. 6. Indskudsafgiften forfalder til betaling, når indskuddet foretages. Indskyderen skal samtidig give meddelelse til Told- og Skattestyrelsen om det afgiftspligtige indskud. Indbetalingen anses for rettidig, når den finder sted senest en måned efter forfaldsdagen. Såfremt der ikke indgives meddelelse efter 2. pkt., finder §§ 41-43 i lov om afgift af dødsboer og gaver tilsvarende anvendelse. Betales indskudsafgiften ikke rettidigt, skal der betales 1,3 pct. i månedlig rente for hver påbegyndt måned fra den 1. i den måned, i hvilken beløbet skal betales af indskyderen.

§ 4. I den efter § 3 opgjorte indkomst kan de i § 1, nr. 1, 2 og 4, nævnte fonde og foreninger foretage fradrag for uddelinger til almenvelgørende eller på anden måde almennyttige formål.

Stk. 2. Stk. 1 finder desuden anvendelse, såfremt uddeling sker til fyldestgørelse af vedtægtsmæssige formål, der ikke er almenvelgørende eller på anden måde almennyttige, når modtager af uddelingerne er skattepligtig heraf i henhold til kildeskattelovens §§ 1 eller 2, eller dødsboskattelovens § 1, stk. 2 eller 3, selskabskattelovens §§ 1 eller 2 eller i henhold til § 1, nr. 1, 2 eller 4, i denne lov. 1. pkt. finder anvendelse, selv om der er tale om gaver til en anden fond, som ikke medregnes til denne fonds skattepligtige indkomst, jf. § 3, stk. 3, medmindre der er tale om gensidige gaver mellem fondene.

Stk. 3. Fonde og foreninger som nævnt i § 1, nr. 1, 2 og 4, kan i den efter § 3 opgjorte indkomst tillige foretage fradrag for hensættelse

til opfyldelse af almenvelgørende eller på anden måde almennyttige formål.

Stk. 4. Hensættelser som nævnt i stk. 3 skal være benyttet i sin helhed inden 5 år efter udløbet af hensættelsesåret. Skatteministeren fastsætter nærmere regler om regnskabsmæssige krav til hensættelsen, herunder at hvert års hensættelse indskydes på konto for sig og udskilles effektivt fra fondens eller foreningens øvrige midler.

Stk. 5. Er en hensættelse som nævnt i stk. 3 ikke benyttet i sin helhed inden udløbet af den i stk. 4 nævnte frist, medregnes det ikke anvendte hensættelsesbeløb med et tillæg af 5 pct. for hvert år fra hensættelsesårets udløb og indtil fristens udløb i den skattepligtige indkomst for hensættelsesåret. Beløb, der i henhold til § 3, stk. 2, og § 10 ikke skulle medregnes i den efter § 3 opgjorte indkomst for hensættelsesåret, efterbeskattes dog ikke.

Stk. 6. Skatteministeren kan i ganske særlige tilfælde tillade, at hensættelsen anvendes efter udløbet af den i stk. 4 nævnte frist.

Stk. 7. Skatteministeren eller den, han bemyndiger dertil, kan desuden tillade, at fonde som nævnt i § 1, nr. 1 og 4, foretager hensættelser som nævnt i stk. 3 til fyldestgørelse af kulturelle, men ikke konkretiserede formål, uden at betingelsen i stk. 4 skal være gældende. Ved dispensationen skal dog fastsættes en frist for anvendelse af de hensatte beløb på ikke over 15 år. Anvendes de hensatte beløb til andet end de almenvelgørende eller på anden måde almennyttige kulturelle formål eller efter den i dispensationen fastsatte frist, medregnes det ikke anvendte hensættelsesbeløb med et tillæg af 5 pct. for hvert år fra hensættelsesårets udløb og indtil udgangen af det år, hvori hensættelsen anvendes eller fristen udløber, i den skattepligtige indkomst for hensættelsesåret.

Stk. 8. Fonde og foreninger, der har foretaget hensættelser efter stk. 3 og 7, kan efter udløbet af fristen for indgivelse af selvangivelsen kun ændre disse hensættelser med Ligningsrådets tilladelse.

§ 5. I den efter § 3 opgjorte indkomst kan de i § 1, nr. 1 og 4, nævnte fonde desuden foretage fradrag for hensættelser til konsolidering af fondskapitalen. Fradraget kan ikke overstige 25 pct. af de i indkomståret foretagne uddelinger til almenvelgørende eller på anden måde almennyttige formål, jf. § 4, stk. 1.

Stk. 2. Skatteministeren eller den, han bemyndiger dertil, kan tillade, at de i § 1, nr. 1 og 4, nævnte fonde foretager fradrag for andre hensættelser, der sker i henhold til krav herom i kongelig konfirmeret fundats, såfremt formålet med hensættelsen fremgår af fundatsen.

Stk. 3. Foreninger som nævnt i § 1, nr. 2, kan i den efter § 3 opgjorte indkomst foretage fradrag for hensættelser til konsolidering af foreningsformuen. Fradraget kan dog højst udgøre en andel af foreningsformuen svarende til den procent, hvormed reguleringstallet for indkomståret efter personskattelovens § 20 er ændret i forhold til reguleringstallet for det foregående indkomstår. Procenten beregnes med én decimal.

Stk. 4. Ved beregningen af fradraget efter stk. 3 opgøres værdien af foreningsformuen efter reglerne i selskabsskattelovens § 14, stk. 2, 1. og 2. pkt., og stk. 3-7.

§ 6. Indtægter, som i henhold til § 3, stk. 2, og § 10 ikke skal medregnes til den skattepligtige indkomst, anses i størst muligt omfang for medgået til de i §§ 4 og 5 nævnte uddelinger og hensættelser, forinden nogen del af den efter § 3 opgjorte indkomst anses for medgået hertil.

§ 7. (Ophævet).

§ 8.3) Ved opgørelsen af den skattepligtige indkomst for de i § 1, nr. 3, nævnte foreninger medregnes indkomst ved erhvervsmæssig virksomhed, renteindtægter samt udbytteindtægter efter reglerne i ligningslovens § 16 A. Ligningslovens § 16 B finder tilsvarende anvendelse på de her omtalte foreninger. Til den skattepligtige indkomst medregnes desuden indkomst opgjort efter reglerne i ejendomsavancebeskatningsloven og aktieavancebeskatningsloven samt indkomst som nævnt i kursgevinstloven. Det gælder også fortjeneste og tab på ombygnings- og forbedringsudgifter, indretninger m.v. indvundet ved afståelse af lejede lokaler, jf. afskrivningslovens § 39, fortjeneste og tab ved afståelse af goodwill og andre immaterielle aktiver, jf. afskrivningslovens § 40, beløb omfattet af ligningslovens § 16 G og indkomst som nævnt i afskrivningslovens §§ 9 og 21. I øvrigt opgøres den skattepligtige indkomst efter skattelovgivningens almindelige for indregistrerede aktieselskaber gældende regler med de undtagelser, der følger af stk. 2 og 3 samt § 9.

Stk. 2. Ved opgørelsen af indkomst efter stk. 1 kan alene fradrages udgifter, der vedrører de indtægter, som er skattepligtige. Dog kan fradrag for renteudgifter og fradrag efter ligningslovens § 6 foretages, uanset om udgifterne eller tabene ikke vedrører erhvervelsen af de skattepligtige indtægter.

Stk. 3. De i § 1, nr. 3, nævnte foreninger beskattes fuldt ud af indkomst ved erhvervsmæssig virksomhed. Den øvrige samlede indkomst opgjort efter stk. 1 og 2 beskattes derimod alene i det omfang, den overstiger 200.000 kr. inden fradrag som nævnt i § 9.

§ 9. Ved opgørelsen af indkomst efter § 8 kan de i § 1, nr. 3, nævnte foreninger foretage fradrag for dispositioner som nævnt i § 4, stk. 1 og 3, samt § 5, stk. 3, jf. stk. 4. § 4, stk. 4, 5, 6 og 8, finder tilsvarende anvendelse på de her nævnte foreninger.

Stk. 2. Reglen i § 6 gælder tilsvarende for foreninger som nævnt i § 1, nr. 3, for så vidt angår indtægter, der ikke skal medregnes til den skattepligtige indkomst i henhold til § 8, stk. 3 eller § 10.

§ 10.4) Til den skattepligtige indkomst for de af denne lov omfattede fonde og foreninger medregnes ikke udbytte af aktier eller andele i selskaber som nævnt i selskabsskattelovens § 1, stk. 1, nr. 1 og 2, for så vidt disse er hjemmehørende her i landet. Dette gælder dog kun, hvis fonden eller foreningen ejer mindst 25 pct. af aktie- eller andelskapitalen i det udbyttegivende selskab i en sammenhængende periode på mindst et år, inden for hvilken periode udbytteudlodningstidspunktet skal ligge.

Stk. 2. Reglerne i stk. 1 finder tilsvarende anvendelse på udbytte fra selskaber, der er hjemmehørende i udlandet, såfremt fonden eller foreningen godtgør, at udbyttet hidrører fra et eller flere selskaber, hvori den til grund for det modtagne udbytte liggende selskabsindkomst beskattes efter regler, der ikke i væsentlig grad afviger fra reglerne her i landet, jf. selskabsskattelovens § 13, stk. 3.

Stk. 3. Udbytte, der ikke er omfattet af stk. 1, og som modtages fra selskaber, der er skattepligtige efter selskabsskattelovens § 1, stk. 1, nr. 1, 2, 4 eller 5 a, medregnes ved opgørelsen af den skattepligtige indkomst med 66 pct. af udbyttebeløbet, når aktierne i det udbyttegivende selskab ikke er omfattet af aktieavancebeskatningslovens § 3.

Stk. 4. Stk. 3 finder tilsvarende anvendelse på udbytte, som modtages fra selskaber, der er hjemmehørende i udlandet, og som ikke er omfattet af stk. 2. Dette gælder dog kun, såfremt den udbyttemodtagende fond eller forening godtgør, at udbyttet hidrører fra et eller flere selskaber, hvori den til grund for det modtagne udbytte liggende selskabsindkomst beskattes efter regler, der ikke i væsentlig grad afviger fra reglerne her i landet. Skatteministeren fastsætter de nærmere regler om betingelserne for, at dette krav kan anses for opfyldt. Hidrører en del af udbyttet til den udbyttemodtagende fond eller forening fra et selskab, hvor beskatningen ikke opfylder det nævnte krav, finder stk. 3 ikke anvendelse på denne del af udbyttet.

Stk. 5. Udlodninger fra udloddende investeringsforeninger, jf. ligningslovens § 16 C, stk. 1, er skattefri for modtageren i det omfang, det fremgår af stk. 6 og 7. Skattefriheden gælder dog ikke, såfremt de beviser for indskud i investeringsforeninger, udlodningen hidrører fra, er omfattet af aktieavancebeskatningslovens § 3.

Stk. 6. Den skattefri del af udlodningerne efter stk. 5 opgøres som forskellen mellem på den ene side udlodningerne og på den anden side den del af udlodningerne, som hidrører fra investeringsforeningens minimumsudlodning beregnet efter ligningslovens § 16 C, stk. 2-6.

Stk. 7. Uanset stk. 6 kan den skattefri del af de samlede udlodninger efter stk. 5 dog ikke overstige investeringsforeningens nettogevinster ved afståelse af aktier omfattet af aktieavancebeskatningslovens § 4 i det indkomstår, de pågældende udlodninger vedrører. De i 1. pkt. omhandlede nettogevinster opgøres under anvendelse af aktieavancebeskatningslovens § 4, stk. 1, 3 og 4, samt § 6 .

Stk. 8. Stk. 3 og 4 finder tilsvarende anvendelse på den del af udlodningerne fra udloddende investeringsforeninger, jf. ligningslovens § 16 C, stk. 1, der opgøres som forskellen mellem på den ene side den skattepligtige del af udlodningerne og på den anden side den del af udlodningerne, som hidrører fra investeringsforeningens nettoindtægter omfattet af ligningslovens § 16 C, stk. 3, nr. 1-8 og 10, nedsat efter ligningslovens § 16 C, stk. 4, 1. og 3. pkt., stk. 5, nr. 1 og 3, og stk. 6, jf. stk. 4, 1. og 3. pkt. Den i 1. pkt. omhandlede del af udlodningerne kan dog ikke overstige den del af udlodningerne, som hidrører fra investeringsforeningens indtægter omfattet af ligningslovens § 16 C, stk. 3, nr. 9, nedsat efter ligningslovens § 16 C, stk. 5, nr. 2. Stk. 3 og 4 finder dog ikke anvendelse, hvis de beviser for indskud i investeringsforeninger, udlodningerne hidrører fra, er omfattet af aktieavancebeskatningslovens § 3.

§ 11. Indkomstskatten udgør 34 pct. af den skattepligtige indkomst.

Stk. 2. Reglerne i selskabsskattelovens § 17, stk. 2, 3 og 4, finder tilsvarende anvendelse på de af denne lov omfattede fonde og foreninger.

§ 12. Selskabsskattelovens § 32, stk. 1-9, finder tilsvarende anvendelse på fonde og foreninger omfattet af § 1.

§ 13. Af den skat, der udredes i henhold til denne lov med tillæg af 11 3/4 pct. og eventuelle renter i anledning af for sen indbetaling af restskat eller indkomstskat, tilfalder 3/ 25 den eller de kommuner, hvori fonden eller foreningen har drevet virksomhed, jf. bestemmelserne i lov om kommunal indkomstskat.

§ 14.5) (Ophævet).

§ 15. Selskabskattelovens regler om ligning og opkrævning finder i øvrigt tilsvarende anvendelse på de af denne lov omfattede fonde og foreninger. Selskabsskattelovens § 10, stk. 2, nr. 3, finder dog ikke anvendelse.

Stk. 2. Foreninger som nævnt i § 1, nr. 2 og 3, der ikke oppebærer rente- og udbytteindkomst ud over 200.000 kr., kan i stedet for selvangivelse indgive erklæring herom. Oppebærer foreningen indkomst fra erhvervsmæssig virksomhed, skal der dog indgives selvangivelse om denne indkomst. Har foreningen oppebåret væsentlige ekstraordinære skattepligtige indtægter i form af avancer m.v., skal der uanset reglen i 1. pkt. indgives selvangivelse.

Stk. 3. Fonde, som nævnt i § 1, nr. 1 og 4,

1) der ikke har indkomst ved erhvervsmæssig virksomhed, og hvis indkomst inkl. skattefri udbytteindkomst efter fradrag af renteudgifter og administrationsomkostninger ikke overstiger 25.000 kr., kan i stedet for selvangivelse indgive erklæring herom,

2) der driver offentligt tilgængelige museer, og som har opnået tilladelse efter § 4, stk. 7, til uden begrænsninger at foretage hensættelser til almenvelgørende eller på anden måde almennyttige kulturelle formål, kan i stedet for selvangivelse indgive erklæring om, at overskuddet udelukkende anvendes til museets formål,

3) der udelukkende anvender overskuddet til formålet, og hvor forholdene i øvrigt taler herfor, kan af skatteministeren eller den, han bemyndiger dertil, få tilladelse til at indgive erklæring i stedet for selvangivelse.

Stk. 4. Skatteministeren fastsætter nærmere regler om opkrævning og inddrivelse af skatter fra fonde og foreninger.

§ 15 A. Skatteministeren kan bemyndige de statslige eller kommunale skattemyndigheder til at træffe afgørelser efter denne lov. Ministeren kan fastsætte regler om adgang til at klage over afgørelserne, herunder om at afgørelserne ikke kan indbringes for højere administrativ myndighed.

§ 16. For det indkomstår, hvori fonden eller foreningen første gang beskattes efter reglerne i denne lov, foretages skattemæssige afskrivninger efter afskrivningslovens regler i overensstemmelse med de i §§ 17-19 angivne overgangsregler, for så vidt fonden eller foreningen ikke hidtil i henhold til selskabsskattelovens § 9 har kunnet foretage skattemæssige afskrivninger for de pågældende aktiver.

§ 17. I det indkomstår, der er grundlaget for den første skatteansættelse, indgår maskiner, inventar og lignende driftsmidler samt skibe, som fonden eller foreningen ejer forud for indkomstårets begyndelse, i saldoværdien efter afskrivningslovens regler med deres handelsværdi på dette tidspunkt omregnet til kontantværdi. Skatteministeren fastsætter nærmere regler herom. Aktiverne anses i afskrivningslovens forstand for anskaffet i det forudgående indkomstår.

§ 18. På bygninger, der er afskrivningsberettigede efter afskrivningsloven, eller på installationer heri, og som er anskaffet eller fuldført forud for indkomstårets begyndelse, foretages afskrivning på grundlag af den værdi, hvormed bygningen eller installationen indgår i ejendomsværdien ved den seneste vurdering forud for det indkomstår, der er grundlaget for den første skatteansættelse.

Stk. 2. Afskrivning på bygninger og installationer, der er anskaffet før den 1. januar 1982, foretages årligt med procentdele af den afskrivningsberettigede værdi. De samlede afskrivninger kan dog ikke overstige værdien reduceret med de normalafskrivninger, der i alt kunne være foretaget, såfremt der fuldt ud var normalafskrevet på bygningen eller installationen siden anskaffelsesåret. Afskrivning kan dog i stedet foretages på grundlag af anskaffelsessummen samt eventuelle udgifter til ombygning og forbedring, hvis det dokumenteres, at summen af disse beløb er højere end den i stk. 1 nævnte værdi. I dette tilfælde begrænses den samlede afskrivning tilsvarende som anført i 2. pkt.

Stk. 3. Afskrivning på bygninger og installationer, der er anskaffet den 1. januar 1982 eller senere, foretages årligt med procentdele af den afskrivningsberettigede værdi, men summen af de anvendte afskrivningsprocenter kan ikke overstige 100 med fradrag af de normalafskrivningsprocenter, der i alt kunne være anvendt, såfremt der fuldt ud var normalafskrevet på bygningen eller installationen siden anskaffelsesåret. Afskrivning kan dog i stedet foretages på grundlag af anskaffelsessummen omregnet til kontantværdi samt eventuelle udgifter til ombygning og forbedring, hvis det dokumenteres, at summen af disse beløb er højere end den i stk. 1 nævnte værdi. I dette

tilfælde begrænses den samlede afskrivning tilsvarende som anført i 1. pkt.

§ 19.6) På installationer, hvorpå der kan afskrives i overensstemmelse med reglerne i afskrivningslovens § 15, stk. 1, jf. § 17, stk. 1 og 2, og som er anskaffet eller fuldført forud for indkomstårets begyndelse, foretages afskrivning på grundlag af den værdi, hvormed installationen skønnes at indgå i ejendomsværdien ved den seneste vurdering forud for indkomståret. De samlede afskrivninger kan dog højst udgøre et beløb svarende til ejendomsværdien reduceret i et omfang, som svarer til forholdet mellem den forløbne tid siden installationens anskaffelse og den til den anvendte afskrivningssats normalt svarende afskrivningsperiode. Afskrivning kan dog i stedet foretages på grundlag af anskaffelsessummen samt eventuelle forbedringsudgifter, hvis det dokumenteres, at summen af disse beløb er højere end den i 1. pkt. nævnte værdi. I dette tilfælde begrænses de samlede afskrivninger tilsvarende som anført i 2. pkt.

§ 20. Ved opgørelsen af fondes og foreningers fortjeneste efter lov om beskatning af fortjeneste ved afståelse af fast ejendom træder ejendomsværdien ved den seneste forud for det indkomstår, der er grundlaget for den første skatteansættelse, foreliggende vurdering i stedet for anskaffelsessummen, såfremt ejendommen er erhvervet inden det indkomstår, der ligger til grund for skatteansættelsen for det indkomstår, der er grundlaget for den første skatteansættelse. Fonden eller foreningen kan dog vælge at lægge anskaffelsessummen til grund, hvis det dokumenteres, at denne er højere end den i 1. pkt. nævnte værdi. Hvis ejendommen er erhvervet før den 19. maj 1993, opgøres anskaffelsessummen efter reglerne i § 4, stk. 3, i lov om beskatning af fortjeneste ved afståelse af fast ejendom, medmindre den i 1. pkt. nævnte ejendomsværdi ligger senere end den 19. maj 1993. Fonden eller foreningen kan dog vælge at lægge ejendomsværdien ved den seneste vurdering forud for det indkomstår, der er grundlaget for den første skatteansættelse, eller anskaffelsessummen til grund, såfremt disse dokumenteres at være højere end anskaffelsessummen opgjort efter reglerne i denne lovs § 4, stk. 3.

Stk. 2. Har fonden eller foreningen forud for det indkomstår, der er grundlaget for den første skatteansættelse, været skattepligtig af fortjeneste ved afståelse af fast ejendom, jf. § 1, stk. 1, nr. 6, og § 2, stk. 1, litra a og b, i lov om indkomstbeskatning af aktieselskaber m.v. skal fonden eller foreningen desuden beskattes af den fortjeneste, der efter disse regler er indtrådt forud for det indkomstår, der er grundlaget for den første skatteansættelse. Ved opgørelse af denne fortjeneste lægges det efter stk. 1 som anskaffelsesudgift anvendte beløb til grund som afståelsessum. Er ejendommen erhvervet før den 19. maj 1993, opgøres anskaffelsessummen dog efter § 4, stk. 3, i lov om beskatning af fortjeneste ved afståelse af fast ejendom.

Stk. 3. De beløb, der efter stk. 1 og 2 anvendes som anskaffelses- eller afståelsessum, omregnes til kontantværdi efter de herom af skatteministeren fastsatte regler.

§ 21. Ved opgørelsen af fondes eller foreningers fortjeneste eller tab efter lov om beskatning af fortjeneste ved afståelse af aktier m.v., der vedrører anskaffelser foretaget inden begyndelsen af det indkomstår, der er grundlaget for den første skatteansættelse, træder kursværdien på dette tidspunkt i stedet for anskaffelsessummen, medmindre denne er højere.

§ 21 A. Ved opgørelsen af fondes og foreningers fortjeneste og tab efter ligningslovens § 16 E, der vedrører formuegoder anskaffet inden begyndelsen af det indkomstår, der er grundlaget for den første skatteansættelse, udgør anskaffelsessummen den oprindelige kontantomregnede anskaffelsessum reduceret med de afskrivninger, der i alt kunne have været foretaget efter ligningslovens § 16 f siden anskaffelsen.

§ 21 B. Ved opgørelsen af fondes og foreningers fortjeneste og tab efter ligningslovens § 14 J, der vedrører aktiver anskaffet inden begyndelsen af det indkomstår, som ligger til grund for skatteansættelsen for det år, hvori fonden eller foreningen første gang beskattes efter fondsbeskatningsloven, udgør anskaffelsessummen de afskrivningsberettigede udgifter til anskaffelse, forbedring m.v. med fradrag af de afskrivninger, der i alt kunne have været foretaget siden anskaffelsen.

§ 21 C. Ved opgørelsen af fondes og foreningers fortjeneste og tab efter kursgevinstloven, der vedrører fordringer eller gæld, som er erhvervet henholdsvis påtaget inden begyndelsen af det indkomstår, der ligger til grund for skatteansættelsen i det år, hvori fonden eller foreningen første gang beskattes efter fondsbeskatningsloven, træder kursværdien på dette tidspunkt i stedet for anskaffelsessummen henholdsvis værdien ved gældens påtagelse. Fonden m.v. kan dog vælge at lægge sidstnævnte værdier til grund. Valget skal træffes samlet for samtlige fordringer og forpligtelser under ét.

§ 22. Har en fond eller forening foretaget henlæggelser som nævnt i selskabsskattelovens § 3, stk. 3, jf. samme lovs § 3, stk. 2, og § 1, stk. 1, nr. 6, skal henlæggelserne være benyttet i deres helhed til et flere almenvelgørende eller på anden måde almennyttige formål inden 5 år efter

udløbet af de indkomstår, der ligger til grund for skatteansættelsen for det indkomstår, hvori fonden eller foreningen første gang beskattes efter fondsbeskatningsloven. § 4, stk. 5, 1. pkt., finder tilsvarende anvendelse på hensættelser som nævnt i 1. pkt. Det samme gælder § 4, stk. 6, for så vidt angår forlængelse af fristen for anvendelse af hensættelser.

§ 23. Loven har virkning fra og med indkomståret 1987.

§ 24. Loven gælder ikke for Færøerne og Grønland.

1) Denne lovbekendtgørelse indeholder bemærkninger om ikrafttrædelses- og overgangsbestemmelser for love, der er vedtaget i folketingsåret 1997-98. For så vidt angår ikrafttrædelses- og overgangsbestemmelser for tidligere vedtagne ændringer i fondsbeskatningsloven henvises til tidligere bekendtgørelser af fondsbeskatningsloven, senest lovbekendtgørelse nr. 813 af 26. oktober 1997.

§ 1, stk. 2, i den her anførte affattelse er trådt i kraft den 28. juni 1998 og har virkning fra og med indkomståret 2000, jf. § 8 i lov nr. 430 af 26. juni 1998, (i det følgende betegnet som ændringsloven). Før ændringslovens ikrafttræden havde § 1, stk. 2, følgende ordlyd:»Stk. 2. Skattepligten efter stk. 1, nr. 1, omfatter ikke fonde omfattet af lov om en realrenteafgift af visse obligationer m.v. og en afgift af aktieafkast i pensionsforhold (realrenteafgiftsloven). § 1, stk. 2, i den her anførte ordlyd trådte i kraft den 28. juni 1998, jf. § 6 i lov nr. 429 af 26. juni 1998, og har derfor virkning fra og med den 28. juni 1998. Da ændringsloven først har virkning fra og med indkomståret 2000, gælder § 1, stk. 2, i den her anførte ordlyd til indkomståret 2000.

§ 8, stk. 1, 4. pkt., er i den her anførte affattelse trådt i kraft den 28. juni 1998 og har virkning fra og med indkomståret 1999, jf. § 16 i lov nr. 434 af 26. juni 1998.

§ 10, stk. 1, 2. pkt., i den her anførte affattelse er trådt i kraft den 5. december 1997 og har virkning for udbytte, der vedtages den 1. januar 1998 eller senere, jf. § 5 i lov nr. 888 af 3. december 1997.

Ophævelsen af bestemmelsen i § 14 er trådt i kraft den 31. december 1997 og har virkning fra og med den 1. juli 1998. Den kommunale skattemyndighed træffer dog efter de hidtidige processuelle regler afgørelse om foretagelse af skatteansættelser og ændring af skatteansættelser vedrørende juridiske personer, bortset fra dødsboer, i det omfang der inden den 1. juli 1998 er udsendt en agterskrivelse efter § 3, stk. 4, i skattestyrelsesloven. Klager over den kommunale skattemyndigheds afgørelser efter § 2, nr. 1, i skattestyrelsesloven i sager vedrørende juridiske personer, bortset fra dødsboer, skal indgives til skatteankenævnet, hvis afgørelsen er truffet før den 1. juli 1998, eller afgørelsen er truffet i en sag som nævnt i 2. pkt., jf. § 9 i lov nr. 1106 af 29. december 1997.

§ 19 er i den her anførte affattelse trådt i kraft den 28. juni 1998 og har virkning fra og med indkomståret 1999, jf. § 16 i lov nr. 434 af 26. juni 1998.

7. Finland

7.1. Law on Associations

7.1.1. Finnish

Associations Act[342]

1 Luku

Yleisiä säännöksiä

1 § Soveltamisala

Yhdistyksen saa perustaa aatteellisen tarkoituksen yhteistä toteuttamista varten. Tarkoitus ei saa olla lain tai hyvien tapojen vastainen.

Yhdistykseen sovelletaan tätä lakia.

2 § Soveltamisalan rajoitukset

Tämä laki ei koske yhteisöä, jonka tarkoituksena on voiton tai muun välittömän taloudellisen edun hankkiminen siihen osalliselle taikka jonka tarkoitus tai toiminnan laatu muuten on pääasiassa taloudellinen.

Yhteisöön, joka on lailla tai asetuksella järjestetty erityistä tarkoitusta varten, tätä lakia sovelletaan vain sikäli kuin niin on erikseen säädetty.

Uskonnollisista yhdyskunnista on voimassa, mitä niistä on erikseen säädetty.

3 § Kielletyt yhdistykset

[342] http://www.prh.fi/fi/yhdistysrekisteri/yhdistyslaki.html, 10 November 2004.

Yhdistys, joka on katsottava jäseniltä vaadittavan kuuliaisuuden ja joukkomuodostelmiin tai ryhmityksiin jakautumisen perusteella taikka aseellisen varustautumisen vuoksi kokonaan tai osittain sotilaalliseen tapaan järjestetyksi, on kielletty.

4 § Luvanvaraiset yhdistykset

Yhdistystä, jonka toimintaan kuuluu harjoituttaminen ampuma-aseiden käyttöön ja joka ei ole yksinomaan metsästystä varten, ei saa perustaa ilman lääninhallituksen lupaa.

5 § Taloudellinen toiminta

Yhdistys saa harjoittaa vain sellaista elinkeinoa tai ansiotoimintaa, josta on määrätty sen säännöissä tai joka muutoin välittömästi liittyy sen tarkoituksen toteuttamiseen taikka jota on pidettävä taloudellisesti vähäarvoisena.

*Ks. myös laki taloudellista toimintaa harjoittavan yhdistyksen muuttamisesta osuuskunnaksi 26.5.1989/502.

6 § Rekisteröinnin oikeusvaikutukset

Yhdistys voi hankkia oikeuksia ja tehdä sitoumuksia sekä olla asianosaisena tuomioistuimessa ja muun viranomaisen luona, jos se on rekisteröity siten kuin tässä laissa säädetään.

Rekisteröidyn yhdistyksen jäsenet eivät vastaa henkilökohtaisesti yhdistyksen velvoitteista.

2 Luku

Yhdistyksen perustaminen

7 § Perustamiskirja

Yhdistyksen perustamisesta on tehtävä perustamiskirja, johon on liitettävä yhdistykselle laaditut säännöt. Perustamiskirja on päivättävä ja vähintään kolmen yhdistyksen jäseneksi liittyvän allekirjoitettava. Perustajana olevan luonnollisen henkilön tulee olla 15 vuotta täyttänyt.

8 § Säännöt

Yhdistyksen säännöissä on mainittava:

1) yhdistyksen nimi;

2) yhdistyksen kotipaikkana oleva Suomen kunta;

3) yhdistyksen tarkoitus ja toimintamuodot;

4) jäsenen velvollisuudesta suorittaa yhdistykselle jäsenmaksuja ja muita maksuja;

5) yhdistyksen hallituksen jäsenten ja yhdistyksen tilintarkastajien lukumäärä tai vähimmäis- ja enimmäismäärä sekä toimikausi;

6) yhdistyksen tilikausi;

7) milloin yhdistyksen hallitus ja tilintarkastajat valitaan, tilinpäätös vahvistetaan ja vastuuvapaudesta päätetään;

8) miten ja missä ajassa yhdistyksen kokous on kutsuttava koolle; sekä

9) miten yhdistyksen varat on käytettävä, jos yhdistys purkautuu tai lakkautetaan.

9 § Kaksikielisyys, yhdistyksen nimi

Yhdistyksen säännöissä voidaan määrätä, että yhdistys on sekä suomen- että ruotsinkielinen. Tällainen yhdistys voidaan 51 §:ssä säädetyin edellytyksin merkitä rekisteriin kaksikielisenä.

Sen lisäksi, mitä 1 momentista seuraa, kaikkien yhdistysten säännöissä voidaan määrätä, että yhdistyksellä on suomenkielinen, ruotsinkielinen ja saamenkielinen nimi taikka nimi kahdella mainituista kielistä, jolloin mitä tahansa asianomaisista nimistä voidaan käyttää yhdistyksen nimenä.

7.1.2. English

Associations Act[343]

(No. 503 of 26 May 1989 as amended by Acts No. 1331 of 29 December 1989, No. 1426 of 18 December 1992, No. 1614 of 30 December 1992, No. 941 of 28 October 1994, No. 1177 of 13 December 1994, No. 1380 of 8 December 1995, No. 685 of 21 May 1999 and No. 894 of 1 November 2002)

[343] http://www.prh.fi/en/yhdistysrekisteri/yhdistyslaki.html, 10 November 2004.

Chapter 1

General provisions

Section 1

Application

An association may be founded for the common realisation of a non-profit purpose. The purpose may not be contrary to law or proper behaviour.

Associations are governed by this Act.

Section 2

Restrictions for application

This Act shall not apply to a corporation whose purpose is to attain profit or other direct financial benefit for a member or whose purpose or activities otherwise are primarily financial.

This Act shall apply to a corporation which has been founded by statute for a special purpose only if specifically so provided.

Religious communities are governed by separate provisions.

Section 3

Prohibited associations

An association which due to the obedience required of members, to the division into units or groups, or to the equipping with arms is to be deemed, in full or in part, militarily organised, shall be prohibited.

Section 4

Associations subject to permission

An association whose activities include training in the use of firearms and whose sole purpose is not hunting, may only be founded with the permission of the County Government.

Section 5

Economic activities

An association may only practice a trade or other economic activity that has been provided for in its rules or that otherwise relates to the realisation of its purpose or that is to be deemed economically insignificant.

Section 6

Legal effects of registration

An association may obtain rights, make commitments and appear before a court or other authority as a party if it has been registered in accordance with the provisions of this Act.

The members of a registered association shall not be personally liable for the commitments of the association.

Chapter 2

Founding of associations

Section 7

Charter

A charter shall be drawn up on the founding of an association and the rules of the association shall be annexed thereto. The charter shall be dated and be signed by three or more persons joining the association. A natural person as a founder shall be 15 years of age or over.

Section 8

Rules

The rules of an association shall state:

- the name of the association;
- the municipality in Finland which shall be the domicile of the association;
- the purpose and forms of activity of the association;
- any obligation of the member to pay membership and other fees to the association;
- the number or the minimum and maximum number of the members of the executive

committee and the auditors and their term of office;

- the accounting period of the association;
- the time for electing the executive committee and the auditors, adopting the annual accounts and deciding on discharging from liability for the accounts;
- the manner in which and the period within which a meeting of the association shall be convened; and
- the manner in which the assets of the association shall be used if the association is dissolved or terminated.

Section 9

Bilingual associations, name of the association

The rules of an association may lay down that the association is both Finnish and Swedish-speaking. An association of this kind may, under conditions prescribed in Section 51, be entered in the register as a bilingual one.

In addition to what follows from the provisions of paragraph 1, the rules of any association may contain a provision that the association has a Finnish, Swedish and Sami language name, or a name in two of the said languages, in which case any of those names may be used as the name of the association.

Chapter 3

Membership

Section 10

Members

An association may have private individuals, corporations and foundations as members.

If the primary purpose of the association is to exercise influence over State affairs, it may have as members only Finnish citizens, foreigners residing in Finland and associations whose members or whose direct or indirect member association members are Finnish citizens or foreigners residing in Finland. (29 December 1989/1331)

Paragraph 3 was repealed by Act 1614/1992 of December 30, 1992.

Section 11

List of members

The executive committee must keep a list of the members of the association. For each member the full name and domicile shall be entered in the list. (30.12.1992/1614)

A member of the association shall, on request, be reserved an opportunity to acquaint himself with the information referred to in paragraph 1. Provisions on other delivery of the information contained in the list are given in the Personal Data Act (523/99). Decisions concerning delivery may be made by the executive committee of the association.

Section 12

Joining an association

A person wishing to join an association must inform the association of his intention. Decisions concerning admission of members shall be taken by the executive committee, unless the rules lay down otherwise.

Section 13

Resigning from an association

A member is entitled to resign from an association at any time by informing the executive committee or its chairperson thereof in writing. A member may also resign by giving a notice thereof at a meeting of the association for entry in the minutes. A provision may be taken in the rules that the resignation will not enter into force until after a specified period of time has passed from the submitting of the notice of resignation. Such period of time may not exceed one year.

Section 14

Expulsion from an association

An association may expel a member on a ground stated in the rules. Nevertheless, the association invariably has the right to expel a member who: 1) has failed to fulfil the obligations to which he

has committed himself by joining the association; 2) by his action within or outside the association has substantially damaged the association; or 3) no longer meets the conditions for membership laid down by law or the rules of the association.

Section 15

Expulsion procedure

A decision to expel a member shall be taken by the association in its meeting, unless otherwise laid down by the rules. The reason for expulsion must be given in the decision. A member is not disqualified from voting in a case concerning his expulsion from the association at a meeting of the association.

Before a decision is taken, the member concerned must be reserved an opportunity to give an explanation in the matter, except where the reason for expulsion is failure to pay the membership fee.

If, according to the rules, decisions concerning expulsion shall be taken by the executive committee, a provision may be included in the rules to the effect that the member is entitled, within a time limit laid down by the rules, to bring his expulsion to a meeting of the association for a decision.

The rules may contain a provision that the meeting may deem a member to have resigned from the association if the member has failed to pay the membership fee for a period specified in the rules.

Chapter 4

Power of decision

Section 16

Making of decisions

Decisions of an association shall be made by its members. The rules may nevertheless lay down that decisions shall, in a manner to be specified below, be made by:

delegates of the association;

private individuals who are members of the association or of associations either direct or indirect members thereof, in a federation vote.

Section 17

Power of decision of members

The members exercise their power of decision at the meetings of the association.

The rules may contain a provision to the effect that in matters specified by the rules the members make decisions in separately organised votes or by mail.

Section 18

Power of decision of delegates

If delegates are given power of decision, the rules must specify the number of delegates, or the manner in which the number is determined, as well as their term, manner of election and duties.

The rules may also stipulate that the seats of the delegates or part of these must be divided among the members or groups formed by the members of the association on grounds specified by the rules. In such case it may also be provided that the delegates must be elected among candidates appointed by those particular members or groups. If one of them has failed to appoint candidates, the delegates may be elected among the candidates put up by the others.

The delegates exercise their power of decision at meetings.

Section 19

Federation vote

The rules may contain provisions concerning the exercise of power of decision in a federation vote in an association which in accordance with its rules only has associations, or both associations and private individuals, as members. The rules must specify the matters in which or the conditions under which the power of decision is exercised in the federation vote.

A federation vote is organised to take place as separate votes or by mail.

Chapter 5

Taking decisions

Section 20

Meetings of associations

A meeting of an association must be organised at a date determined by the rules. If it has not been convened, every member of the association has the right to demand that a meeting be held.

An extraordinary meeting of an association must be organised when a meeting of the association so decides, or the executive committee considers it justified, or at least one tenth of the members of the association entitled to vote so demands for the handling of a matter notified by them. If the association, according to its rules, may have only associations or both associations and private individuals as members, it may be provided for by the rules that the minority that is entitled to demand an extraordinary meeting to be held shall be smaller or greater than one tenth. The rules of other types of associations may only provide for a smaller majority.

A demand that a meeting be held is to be submitted in writing to the executive committee of the association. The committee must immediately on receipt of the demand convene the meeting. If it fails to do so, or it has not been possible to present the demand to the committee, the County Government shall, at the request of the member who demanded that a meeting be held, authorize the applicant to convene the meeting at the cost of the association or oblige the committee to do so under penalty of a fine.

Section 21

Meeting of delegates

The provisions of this Act in respect of a meeting of the association, shall mutatis mutandis apply to meetings of delegates. An extraordinary meeting of delegates must nevertheless only be held where the delegates so decide, or the committee considers it justified, or the number of delegates stated in paragraph 2 of Section 20 so demands for the handling of a matter they shall notify.

Section 22

Organisation of other forms of decision-making

If a matter specified in the rules is to be decided on by the association at a specified date on separate voting occasions or by mail and that has not been the case, any member of the association is entitled to demand in writing that the committee organise this kind of decision-making opportunity. If the committee, despite the request, has failed to organise an opportunity for the decision-making or it has not been possible to present the demand to the committee, the County Government shall, at the request of the member who required that the meeting be held, authorize the applicant to organise the voting event at the cost of the association or oblige the committee to do so under penalty of a fine.

Section 23

Matters to be decided at meetings

Matters to be decided on by a meeting of the association or, if so provided by the rules, a meeting of the delegates, include:

any amendments to the rules of the association;

assignment or mortgaging of real estate or assignment of other property of significance to the activities of the association;

voting and election rules referred to in Section 30;

election or expulsion of the committee or its member or an auditor;

adoption of the annual accounts and discharging from liability for the accounts; and

dissolution of association.

The rules may contain a provision that the executive committee may decide on selling, exchanging or mortgaging property of the association.

Section 24

Invitations to meetings

A meeting of the association must be convened in a manner laid down in the rules. The invitation to the meeting shall state the date and place of the meeting. A matter referred to in Section 23 and/or other comparable matter may not be decided on at the meeting, unless the matter has been stated in the invitation.

Section 25

Voting rights of members

Unless otherwise provided in the rules, each member of 15 years or over has the right to vote and each member entitled to vote has one vote. A private person may not use his voting right through a representative, unless so provided in the rules.

The rules may contain a provision that a member who has failed to pay his membership fee for a specified period, may not use his voting right. The rules may provide that, to have the right to vote at a meeting, a member has to inform the association in advance of his participation in the meeting, no later than by a date given in the invitation to the meeting.

Section 26

Disqualification at meetings of associations

At a meeting of an association, a member shall neither vote nor propose any decision when a decision is to be taken on a contract between himself and the association or on other matter where there is a conflict of interest between himself and the association.

A member of the committee or other person entrusted with a function in the administration of the association shall not vote when a decision is taken in respect of electing or expelling an auditor, adopting the annual accounts, or discharging from liability for the accounts, in a matter relating to the administration for which he is accountable.

The provisions concerning disqualification of persons referred to in Section 1 and 2, shall also apply to their agents or representatives.

Section 27

Rules for decision-making

Unless otherwise provided in the rules, the motion to be carried by the association shall be:

the motion supported by more than half of the votes cast;

in the case of a tie, the motion supported by the chairman of the meeting, or, if the decision is taken in separately organized votes or by mail, the result obtained by drawing lots; and

in a case relating to amendment of the rules, dissolution of the association or assignment of the main part of the association's property, the motion supported by at least three quarters of the votes cast.

A decision to amend the rules in a manner referred to in Section 17, paragraph 2, or in Section 19, paragraph 1, or by replacing the majority vote system by the proportional electoral system, shall nevertheless be valid if more than half of the votes cast have supported the motion and the decision has in other respects been taken in compliance with the provisions or regulations concerning amendment of rules.

Notwithstanding the provisions below on voidness of decisions, a decision to amend the rules that relates to the manner of carrying out elections, the number of votes of a member, composition of a body, or a member's liability to pay, shall be valid even if the amendment would result in infringing a special interest guaranteed him in the rules or the equality of members, if the decision, in cases referred to at item 3 of paragraph 1 or in paragraph 2, has been taken in the manner laid down in said paragraph.

If the association according to its rules is a member of another association, the rules may provide that amendment of the rules also requires the approval of the association in which the association is directly or indirectly a member.

Section 28

Elections

In an election to be held at a meeting, a majority vote system shall be followed, unless the election of persons is unanimous or unless otherwise provided for in the rules. In an election organised to take place in separate votes or by mail, a proportional electoral system shall be followed, unless otherwise provided for in the rules. The right to participate in appointing candidates for the election shall be reserved to everyone entitled to make decisions.

Section 29

Holding an election

When a majority vote system is applied, candidates given the highest numbers of votes will be elected, unless other provisions on the majority required have been given in the rules.

Where an election under law or the rules has to be held as a proportional one, the rules shall contain provisions on the manner in which the election in that case shall be arranged.

The rules may stipulate that a proportional election be arranged:

by using lists of candidates in such a manner that each vote is given to the list of candidates in its entirety, whereby the candidate occupying the first position on the list is given the total vote given to the list as his comparative index, the candidate occupying the second position is given half of the total vote, the candidate occupying the third position one third of the total vote, and so on, and the persons who become elected will be determined by the order of the comparative indexes of the candidates;

by using lists of candidates, but in such a manner that each vote is given to one of the candidates on the list, whereby on each list the candidate with the highest vote is given the total vote as his comparative index, the candidate occupying the second position is given half of the total vote, the candidate occupying the third position one third of the total vote, and so on, and the persons who become elected will be determined by the order of the comparative indexes of the candidates;

without using lists of candidates in such a manner that in the vote each vote given is divided among the candidates marked on the ballot paper so that the candidate occupying the first position is given one whole vote, the candidate occupying the second position half of a vote, the candidate occupying the third position a third of a vote, and so on, and the persons who become elected will be determined by the order of the number of votes obtained by each candidate;

or in any other manner specified by the rules.

A proportional election shall be carried out by a secret ballot. In the case of a tie, appointments shall be cast by drawing lots.

Section 30

Voting and election rules

If power of decision in an association is exercised in separately organized votes or by mail, the association must for this purpose establish voting and election rules, in which shall be included any regulations on voting and elections needed to supplement the provisions of this Act and the rules of the association.

Section 31

Drawing up of records

The chairman of a meeting shall see to it that a record is drawn up of the resolutions adopted at the meeting. The record must be signed by the chairman of the meeting and examined by at least two persons elected for that purpose at the meeting or by the association itself.

If decisions have been taken in separately organized votes or by mail, the executive committee of the association shall see to it that a record dated and signed by the chairman of the committee is drawn up of the procedure applied in taking decisions, of vote counting and the result thereof and of the resolution adopted.

A member of the association is entitled, on request, to inspect the records referred to in paragraphs 1 and 2.

Section 32

Voidability of resolutions

If a resolution of an association has not been taken in proper order or if it otherwise is contrary to law or the rules of the association, any member, the executive committee or any member of the executive committee of the association may bring action against the association to have the resolution declared void. A person who has contributed to the adoption of the resolution at the meeting has no right to bring action for annulment.

The action has to be brought within three months of adopting the resolution, or, if the resolution has been adopted in separate votes or by mail, within three months of the date of the record concerning the resolution. If no action is brought within the time limit, the resolution is to be deemed valid.

If the executive committee of the association has brought action, a meeting of the association must be convened without delay to elect a representative to answer for the association.

Section 33

Voidness of resolutions

Notwithstanding any action for annulment, a resolution shall be void, if it violates the right of a third party.

Subject to Section 27, paragraph 3, a resolution shall likewise be void if it diminishes the special benefit that a member according to the rules enjoys in the association or if its contents or the

procedure followed in adopting it essentially violates the equality of a member.

Any member, the executive committee, or any member of the executive committee of the association may bring action against the association to have a resolution of the association confirmed to be void.

Section 34

Ban on enforcement

When an action has been brought against an association, the court may ban the enforcement of a resolution of the association or order that it be interrupted. Such ban or order may also be lifted.

A resolution referred to in paragraph 1 above may not be appealed against separately.

Chapter 6

Administration of an association

Section 35

Executive Committee

An association shall have an executive committee which shall consist of no less than three members. The executive committee shall carefully attend to the affairs of the association in compliance with the law and the rules of and resolutions adopted by the association. The association shall be represented by the executive committee.

The executive committee shall have a chairman. The chairman may not be a person lacking legal competence. Other members of the committee shall be 15 years of age or over. A person who is bankrupt may not function as a member of the executive committee.

The chairman shall be resident in Finland, unless the National Board of Patents and Registration grants an exception of this provision. If the primary purpose of the association is to exercise influence over State affairs, only persons resident in Finland may function as members of the executive committee. (1.11.2002/894)

Section 36

Persons entitled to sign the name of the association

The chairman of the executive committee has the right to sign the name of the association, unless this right has been limited in the manner referred to in paragraph 3 below.

The rules of the association may stipulate that the name of the association may also be signed by:

one or more members of the executive committee;

other person on the basis of his position; or

a person specifically authorized to do so by the executive committee.

A person who lacks legal competence or is bankrupt may not represent the association nor sign its name. The right to sign the name of the association may be limited in such manner that two or more persons may only sign the name of the association jointly. No other limitations may be entered in the register of associations.

The signature of the association shall contain the name of the association and the signature in own hand of the person or persons authorized to sign the name.

A summons or other communication shall be deemed to have reached the association when it is served upon a person authorized to sign name of the association either by himself or together with another person.

Section 37

Disqualification

A member of the executive committee or a functionary of the association shall not participate in the handling of a contract between himself and the association, nor shall he participate in the handling and deciding of any other issue in which his private interest may be in conflict with the interest of the association.

Section 38 (28.10.1994/941)

Audit

The audit of an association shall be governed by the provisions of this Act and the Audit Act (936/94).

An association shall have a minimum of one auditor and one deputy auditor.

Section 39

Liability to pay damages

A member of the executive committee, as well as a functionary of an association shall be liable to compensate all damage he has in office either wilfully or negligently caused to the association. The same shall apply to damage caused to any member of the association or a third party by an act against this Act or the rules of the association. The liability in damages of an employee shall be governed by specic provisions thereon. (28.10.1994/941)

The adjustment of damages as well as the allocation of the liability in damages among two or more persons liable for the damages shall be governed by the provisions of Chapters 2 and 6 of the Damages Act (412/74).

An action for compensation of damage caused to the association may also be brought in the court of the domicile of the association.

Chapter 7

Dissolution

Section 40

Liquidation measures

When an association has decided to dissolve, the executive committee has to attend to the liquidation measures caused by the dissolution, unless the association has appointed one or more other liquidators for the task to replace the executive committee. No liquidation measures are needed, however, if the association, on deciding on dissolution, has at the same time approved a final account, drawn up by the executive committee, according to which the association has no debts.

The economic activity of an association that has decided to dissolve may be continued only to the extent required by appropriate liquidation proceedings. The liquidators are entitled to request a public summons for creditors and to surrender the property of the association into bankruptcy. If the assets remaining after debts have been paid cannot be used in the manner stipulated by the rules, the liquidators must surrender them to the State to be used to the extent possible to further a cause closely related to that of the activity of the association. The liquidators must draw up a final account on the dissolution and arrange its safekeeping.

An association shall be deemed to have terminated when an entry on the dissolution has been made in the register of associations.

Section 41

Declaring an association dissolved

If the activity of an association has ceased and the association has not been dissolved, its member or any other party involved may request the court of the domicile of the association to declare the association dissolved. The association shall be reserved an opportunity to be heard on account of the request. The request shall be granted if it is shown that the activity of the association has ceased. Unless proven otherwise, the activity of the association shall be deemed to have ceased, if ten years have passed since the filing of the latest notice to the register of associations.

On granting the request, the court shall at the same time, if necessary, appoint the applicant or other person as a liquidator to attend to the liquidation measures. In such case the provisions of Section 40, paragraph 2, shall apply.

Section 42

Contesting liquidation measures

If a member of an association or other party whose right is affected by the dissolution of the association, wishes to contest a measure taken by the liquidators, he must bring action against the liquidators within six months of the entry of the dissolution in the register of associations. The action must be brought before the court of the domicile of the association.

Chapter 8

Terminating of associations

Section 43

Terminating and issuing a caution

The court of first instance of the domicile of an association may on the basis of an action brought by the Ministry of the Interior, Public Prosecutor or a member of the association declare the association terminated:

if the association acts substantially against law or good practice;

if the association acts substantially against the purpose defined for it in its rules; or

if the association acts in violation of the permission referred to in Section 4 or the provision of Section 35, paragraph 3.

If the public interest does not require termination of the association, the association may be cautioned instead of being terminated.

If the association is declared terminated or is cautioned, an association which is its direct or indirect member and which has been summoned to court may also be declared terminated or be cautioned, if that association has contributed to the action referred to in paragraph 1 of the first mentioned association.

If the use of the assets of the terminated association in the manner laid down by the rules is impossible or such use would be against the law or good practice, the assets of the association shall be declared forfeit to the State.

Section 44

Provisional prohibition of activities

When legal proceedings have been taken to have an association terminated, the court may in handling the matter, at the request of the interested party, provisionally prohibit the activities of the association, if there is likelihood that the association is acting in violation of the provisions of Section 43, paragraph 1.

In response to a demand of the Ministry of the Interior or the Public Prosecutor, the prohibition referred to in paragraph 1 may already be issued before the legal proceedings to have the association terminated have been taken, if there is likelihood that the association essentially acts in violation of the law or good practice, or illegally continues the activities of a terminated association. Such prohibition shall lapse if a summons for the termination of the association has not been requested within 14 days of issuing the prohibition and shall not be in force any longer than until the case is taken up at a court session.

If the court has issued a provisional prohibition of activities, every time it handles the case, it has to decide on whether or not the prohibition is in force. A decision concerning a prohibition of activities may not be appealed from separately.

If a temporary prohibition of activities has been issued under item 1 of Section 43, paragraph 1, a new association may not be founded to continue the activities of the association.

Section 45

Termination of activities; liquidators

When an association is declared terminated or its activities are provisionally prohibited, the association shall immediately terminate its activities. The executive committee of the association may nevertheless continue the trade or other economic activity carried on by the association and manage the property of the association until the decision to terminate the association has become final, unless otherwise ordered by the court.

If the court does not permit the executive committee to manage the association's property in the period referred to in paragraph 1, the court shall appoint at least one person, in the capacity of a trustee, to manage the property of the association.

On declaring the association terminated the court shall, where necessary, appoint one or more liquidators. In such case the provisions of this Act in respect of liquidation and contesting of liquidation measures in the dissolving process of an association shall apply mutantis mutandis.

Section 46

Competent Court

An action for termination of an association shall be considered in the court of the municipality where the association has its domicile. This court may at the same time also hear any question concerning termination of the association referred to in Section 43, third paragraph.

Chapter 9

Entering in the Register of Associations

Section 47

Authorities

The Register of Associations is maintained by the National Board of Patents and Registration of Finland. The register offices [referred to in the Register Administration Act (166/1996)] shall serve as local authorities in matters concerning the Register of Associations. (13.12.1994/1177)

The Register of Associations, with related documents, is available to the public. Anyone is entitled to obtain extracts and certificates from the Register and the related documents in the manner prescribed in the Act on the Openness of Government Activities (621/1999). (21.5.1999/685)

Section 48

Basic declarations

A declaration for registration of an association (basic declaration) shall be filed in writing with the National Board of Patents and Registration of Finland or the local authority of the domicile of the association which will forward it to the National Board of Patents and Registration of Finland. (13.12.1994/1177)

The basic declaration, which shall be accompanied by the charter and the rules of the association, shall give the full name, address, domicile and personal identity code of the chairman of the committee and of each person authorized to sign the name of the association as well as the limitation concerning the right to sign the name of the association referred to in Section 36, if any. If such person has no Finnish personal identity code, his date of birth shall be given. (3.12.1994/1177)

The chairman of the executive committee of the association shall sign the declaration and give an affirmation that the particulars given in the declaration are correct and that the persons authorized to sign the name are legally competent.

Section 49

Processing of basic declarations and registration of associations

In respect of a basic declaration the National Board of Patents and Registration shall check that:

it is drawn up in the manner prescribed in Section 48;

the name of the association clearly differs from the names of associations previously entered in the Register, and that it is not misleading;

there are no obstacles under Chapter 1 to registration; and

there is no other obstacle based on the law to registration. (13.12.1994/1177)

If, under the first paragraph there exists an obstacle to registration, but the declaration is nevertheless not deemed inadmissible or registration is not refused immediately, the person filing the declaration shall be reserved an opportunity to supplement or correct the declaration or submit his comments. This must take place within the time limit laid down by the National Board of Patents and Registration of Finland, and on pain that failure to do so shall result in the lapse of the case, unless special reasons exist to the contrary. If an obstacle to registration continues to exist even after the declaration has been supplemented or corrected or comments have been filed, registration is to be refused. The person filing the declaration may nevertheless be given a new time limit if reasons thereto exist. (13.12.1994/1177)

If no obstacle is found to registration, the association shall be entered in the register without delay. (8.12.1995/1380)

Section 50

Note indicating registration

When an association has been entered in the register, the words "rekisteröity yhdistys" or the abbreviation of these words, "ry", or, if the rules of the association are in Swedish, the words "registrerad förening" or the abbreviation of these, "rf", are added to its name.

If the association, in accordance with Section 9, has both a Finnish and a Swedish name, the said note is added to its Finnish name in the Finnish form and to the Swedish name in the Swedish form. If the association also has a name in the Sami language, the words "registrerejuvvon searvi" or their abbreviation, "rs", is added to that name.

Section 51

Registration of bilingual association

An association shall be entered in the register both in Finnish and Swedish language, if the rules of the association are drawn up and the declaration for registration is filed in both of the languages. On filing a basic declaration or a notice concerning an amendment to the rules, or within a time limit to be laid down by decree, a certificate provided by an authorized translator to the effect that the contents of the rules are identical shall also be submitted.

Section 52

Report for entry of amendment

A notice (report for entry of amendment) shall be filed with the register in respect of an amendment to the rules of an association and of a change of chairman of the executive committee or persons authorized to sign the name of the association, which in the case of amendment of rules must be accompanied by the amended rules. Provisions concerning a basic declaration of Section 48 shall apply to the filing and signing of the notice and to the affirmation to be given.

An amendment of rules enters into force once it is entered in the register.

When a change in the identity of persons authorized to sign the company name has been entered in the register, knowledge of the change shall be deemed to have become available to a third party, except if it is found out that the third party neither had nor was obliged to have knowledge thereof. Prior to entering the change in the register it may not be referred to except against a person who is shown to have had knowledge thereof.

Section 53

Report for entry of dissolution

A report for entry of the dissolution of an association (report for entry of dissolution) shall be filed by the chairman of the executive committee or a liquidator and it shall state the persons who have acted as liquidators as well as the fact that the liquidation measures have been completed.

Section 54

Handling of reports for entry of amendments and of dissolution

The provisions laid down on checking and entering in the register of a basic declaration shall mutatis mutandis apply to the checking and entering in the register of reports for entry of amendments and of dissolution.

Section 55

Preliminary checks

At the request of an association or its founders, the National Board of Patents and Registration may carry out a preliminary check of the rules or amendments to them (preliminary check) where the size of the association, the significance of the amendment to the rules, or other similar reasons justify it. The request may also concern the rules of an association that is or is meant to be a direct or indirect member of the association. (13.12.1994/1177)

The provisions laid down above on the checks of basic declarations and reports for entry of amendments shall be applicable to a preliminary check. A decision given in respect of a preliminary check shall be binding, except if the association has amended the rules or amendments to the rules that have been the subject of a preliminary check in a manner that makes a new check necessary. Such decision shall be in force for two years from the date on which it was given.

Despite of any preliminary check, basic declarations and reports for entry of amendment must be filed as laid down above and they shall also disclose any decision relating to a preliminary check and the parts, if any, in which the rules have been amended after the preliminary check.

The association may decide that an amendment to the rules which has been the subject of a preliminary check and which has been approved in the association without any changes must be complied with in the internal activities of the association although the amendment has not yet been entered in the register.

Section 56

Appeal procedure and revocation of entries in the register

Specific provisions shall apply to the procedure of appealing against a decision taken by the National Board of Patents and Registration under this Act. A decision to the effect that no preliminary check

referred to in Section 55 will be carried out may nevertheless not be appealed against. (13.12.1994/1177)

Any person who considers that the name of an association or other entry in the register infringes his right is entitled to bring an action against the association in the court of the domicile of the association to have the register entry revoked.

Section 57

Further provisions

Further provisions concerning the Register of Associations, the entries to be made in it and the processing of applications as well as preliminary checks shall be given by Government decree where necessary.

Chapter 10

Unregistered associations

Section 58

Liability for obligations

An association that is not entered in the register may not acquire rights or undertake obligations, nor sue or be sued in its own name.

Liability for an obligation caused by an act on behalf of an unregistered association rests with the persons who took part in the act or decided on it personally and jointly and severally. Other members of the association shall not be personally liable for such obligation.

Section 59

Acting on behalf of an association

In a case concerning an unregistered association before a court of law or other authority, the chairman of the association or of its executive committee or other person attending to its affairs may act on behalf of the association. A communication meant for the association may also be served upon such person.

An action to have an unregistered association terminated may be brought against one or more members of the association or of its executive committee. The action must be brought before the court of the municipality where the defendant or one of defendants is domiciled.

In other respects, unregistered associations shall mutatis mutandis be governed by the provisions of Sections 1-5, 10, 11, 43, 44, 60 and 62.

7.2. Law on Foundations

7.2.1. Finnish

Foundations Act[344]

1 LUKU

Säätiön perustaminen

1 § (13.7.1964/400)

Jos joku tahtoo luovuttaa omaisuutta itsenäisen säätiön perustamista varten, tehköön siitä säädekirjan. Itsenäisen säätiön perustamisesta säätäjän kuoltua on määrättävä kirjallisessa testamentissa.

2 §

Säätiön perustamiseen on hankittava lupa. Säätiöllä on oleva vahvistetut säännöt, ja se on merkittävä erityiseen säätiöistä pidettävään rekisteriin.

3 § (27.3.1987/349)

Säätiön perustamismääräyksessä on mainittava säätiön tarkoitus ja sille tuleva omaisuus. Säädekirja on päivättävä, säätäjän allekirjoitettava sekä kahden henkilön oikeaksi todistettava. Mikäli säätäjä ei itse pidä huolta perustamistoimista, hänen tulee määrätä, kenen niistä on huolehdittava.

Säädekirjaan sisältyvän säätiön perustamismääräyksen säätäjä voi peruuttaa ennen säätiön rekisteröimistä. Jos säätäjä haluaa peruuttaa perustamismääräyksen sen jälkeen, kun säätiön perustamislupaa koskeva hakemus on tehty patentti- ja rekisterihallitukselle, on säätäjän toimitettava patentti- ja rekisterihallitukselle kirjallinen, kahden henkilön oikeaksi todistama peruutusilmoitus. (13.12.1994/1172)

[344] http://192.49.234.69/fi/laki/ajantasa/1930/19300109, 10 November 2004.

3 a § (13.12.1994/1172)

Jos säätiön perustamisesta on määrätty testamentissa, tulee sen, jolla on kuolinpesä hallussaan, kolmen kuukauden kuluessa saatuaan testamentin sisällöstä tiedon ilmoittaa siitä sen paikkakunnan tuomioistuimelle, missä säätäjän kotipaikka on viimeksi ollut, tai jollei hän ole asunut Suomessa, Helsingin käräjäoikeudelle. Testamentista tuomioistuimen on ilmoitettava patentti- ja rekisterihallitukselle.

Kun tuomioistuin on saanut tiedon 1 momentissa tarkoitetusta testamentista, sen tulee viivytyksettä selvittää, suostuuko testamentissa säätiön perustamisesta huolehtimaan määrätty henkilö tehtävään. Jollei suostumusta saada tai jos tehtävään määrätty ei ole siihen sovelias, tulee tuomioistuimen määrätä siihen yksi tai useampia henkilöitä. Samoin on meneteltävä, jos säätäjä ei ole määrännyt tehtävään ketään tai tehtävä on muusta syystä avoin. Tuomioistuimen on ilmoitettava antamastaan määräyksestä patentti- ja rekisterihallitukselle. Mitä perintökaaressa (40/65) säädetään pesänselvittäjän vapauttamisesta toimestaan, on vastaavasti sovellettava tällaiseen henkilöön.

Jollei testamentissa perustettavaksi määrätylle säätiölle ole haettu perustamislupaa kohtuullisessa ajassa sen jälkeen, kun patentti- ja rekisterihallitus on saanut 1 tai 2 momentissa tarkoitetun ilmoituksen, patentti- ja rekisterihallituksen on ilmoitettava asiasta asianomaiselle tuomioistuimelle.

4 § (13.7.1964/400)

Säätiön säännöissä on mainittava:

1) säätiön nimi, johon tulee sisältyä sana "säätiö" ja jonka tulee selvästi erota säätiörekisteriin ennen merkittyjen säätiöiden nimistä;

2) se kunta, jota on pidettävä säätiön kotipaikkana;

3) säätiön tarkoitus ja miten se on toteutettava;

4) säätiölle tuleva omaisuus ja sen hoitamistapa;

5) säätiön hallituksen jäsenten ja tilintarkastajien lukumäärä, asettamistapa ja toimikausi;

6) säätiön nimen kirjoittamisesta;

7) milloin tilinpäätös on tehtävä sekä tilejä ja hallintoa tarkastettava; sekä

8) miten päätös säätiön sääntöjen muuttamisesta ja säätiön lakkauttamisesta on tehtävä. (27.3.1987/349)

Säätiö saa nimenään käyttää myös nimensä toiseen kotimaiseen kieleen tehtyä käännöstä, joka on mainittu säätiön säännöissä.

Jos säätäjä on antanut muista säätiötä koskevista asioista määräyksiä, on nekin sääntöihin otettava.

Jos säätäjä on kuollut tai häneltä ei muuten voida saada ohjetta, saadaan sääntöjä laadittaessa poiketa säätäjän määräyksistä, mikäli ne ovat lain tai hyvien tapojen vastaisia taikka mikäli määräyksiä noudatettaessa säännöt tulisivat sellaisiksi, että ne olisi 17 §:n mukaan muutettava. Jos sääntöjä ei voida laatia säätiön tarkoitusta olennaisesti muuttamatta, raukeaa säätiön perustaminen. (27.3.1987/349)

5 § (13.7.1964/400)

Lupa säätiön perustamiseen on haettava patentti- ja rekisterihallitukselta, jolta samalla on pyydettävä säätiön sääntöjen vahvistamista. Hakemus on tehtävä patentti- ja rekisterihallitukselle kirjallisesti, ja siihen on liitettävä säädekirja tai testamentti joko alkuperäisenä tai viran puolesta oikeaksi todistettuna jäljennöksenä sekä selvitys siitä, että testamentti on saanut lainvoiman. Hakemukseen on myös liitettävä säätiölle laaditut säännöt. (13.12.1994/1172)

2 momentti on kumottu L:lla 27.3.1987/349.

Perustamislupa on annettava, jos säätiön tarkoitus on hyödyllinen, ja säännöt vahvistettava, jos ne on laadittu tämän lain säännösten mukaisesti eikä niiden sisältö ole vastoin lakia tai hyviä tapoja. Perustamislupaa älköön kuitenkaan annettako, jos säätiön tarkoituksena sen sääntöjen mukaan on liiketoiminnan harjoittaminen tai jos sen pääasiallisena tarkoituksena ilmeisesti on välittömän taloudellisen edun hankkiminen säätäjälle tahi säätiön toimihenkilölle, taikka milloin säätiön perustaminen olisi sääntöperinnöstä voimassa olevien säännösten kiertämistä. Lupaa säätiön perustamiseen ei myöskään saa antaa, jos säätiölle tuleva omaisuus on asetuksella säädettävää määrää pienempi tai sellaisessa epäsuhteessa säätiön tarkoitukseen, ettei säätiön perustamiselle ole edellytyksiä. (27.3.1987/349)

6 § (13.7.1964/400)

Säätiörekisteri on koko maalle yhteinen ja sitä pitää Patentti- ja rekisterihallitus. Säätiörekisteriin tehtävistä ilmoituksista noudatetaan, mitä yritys- ja yhteisötietolain (244/ 2001) 10 ja 11 §:ssä säädetään. Rekisteri-ilmoituksen tekemisestä ja allekirjoittamisesta vastuullisista henkilöistä säädetään yritys- ja yhteisötietolain 14 §:ssä. (16.3.2001/248)

Säätiö on ilmoitettava säätiörekisteriin kuuden kuukauden kuluessa perustamisluvan antamisesta. Ilmoitukseen tulee sisältyä: (16.3.2001/248)

1) ilmoitus hallituksen puheenjohtajan sekä jokaisen jäsenen ja varajäsenen täydellisestä nimestä, osoitteesta, asuinpaikasta ja suomalaisesta henkilötunnuksesta tai tämän puuttuessa syntymäajasta; (13.12.1994/1172)

2) hallituksen vakuutus ja tilintarkastajien todistus, että säätiölle määrätty irtain omaisuus on hallituksen huostassa;

3) oikeaksi todistettuna jäljennöksenä säätiölle määrätyn kiinteän omaisuuden luovutuskirja, jonka tulee olla myös omaisuuden säätiön puolesta vastaanottaneen allekirjoittama;

4) ilmoitus sellaisen henkilön täydellisestä nimestä, osoitteesta, asuinpaikasta ja suomalaisesta henkilötunnuksesta tai tämän puuttuessa syntymäajasta, jolle on annettu oikeus säätiön nimen kirjoittamiseen yksin tai yhdessä toisen kanssa; sekä (13.12.1994/1172)

5) ilmoitus säätiön postiosoitteesta. (27.3.1987/349)

Jos säädekirjaan perustuvaa säätiötä ei ole määräajassa ilmoitettu rekisteröitäväksi tai jos säätiön merkitseminen rekisteriin on lainvoiman saaneella päätöksellä evätty, perustamislupa raukeaa. Hyväksyttävästä syystä patentti- ja rekisterihallitus voi pidentää ilmoituksen tekemiselle säädettyä määräaikaa. (13.12.1994/1172)

Jos testamenttiin perustuvaa säätiötä ei ole määräajassa ilmoitettu rekisteröitäväksi, patentti- ja rekisterihallitus voi asettaa velvollisuuksien täyttämiseksi uhkasakon säätiölle valitun hallituksen jäsenille. Uhkasakon määrää maksettavaksi patentti- ja rekisterihallitus. (13.12.1994/1172)

Jos ilmoitukseen liitetty selvitys havaitaan asianmukaiseksi, on rekisteriin merkitseminen viivytyksettä toimitettava. (27.3.1987/349)

6 momentti on kumottu L:lla 30.12.1992/1615.

Jos perustamisluvan saanutta säätiötä ei merkitä rekisteriin, raukeavat omaisuuden luovuttamista säätiölle koskeneet oikeustoimet. (27.3.1987/349)

7 § (13.7.1964/400)

Säätiörekisteriin on merkittävä:

1) säätiön nimi, tarkoitus, kotipaikka ja postiosoite; sekä

2) hallituksen puheenjohtajan sekä jokaisen jäsenen ja varajäsenen samoin kuin säätiön jokaisen nimenkirjoittajan täydellinen nimi, osoite, asuinpaikka ja henkilötunnus tai syntymäaika, sekä, jos hallituksena toimivat toisen säätiön, yhteisön tai laitoksen hallituksen jäsenet taikka viranomainen, maininta siitä sekä säätiön tai yhteisön tai laitoksen rekisterinumero ja rekisteri, johon se on merkitty. (13.12.1994/1172) (30.12.1992/1615)Milloin säätiön sääntöihin on otettu määräys sen nimestä käytettävästä käännöksestä, on tästä myös tehtävä merkintä rekisteriin.

8 §

Kun säätiö on rekisteriin merkitty, voi se nimiinsä saavuttaa oikeuksia ja tehdä sitoumuksia sekä kantaa ja vastata.

Joka, ennenkuin säätiö on rekisteriin merkitty, tekee sitoumuksen säätiön nimiin, on siitä vastuussa niinkuin omasta velastaan. Jos sitoumuksen antajia on useampia, vastatkoon siitä kukin omasta ja toistensa puolesta.

8 a § (13.7.1964/400)

Säätiö älköön harjoittako muuta liiketoimintaa kuin sellaista, joka on sen säännöissä mainittu ja joka välittömästi edistää säätiön tarkoituksen toteuttamista.

7.2.2. English

Foundations Act[345]

(109/1930; AMENDMENTS UP TO 248/2001 INCLUDED)

[345] http://192.49.234.69/en/laki/kaannokset/1930/en19300109.pdf, 10 November 2004.

Chapter 1 — Establishment of a foundation

Section 1 (400/1964)

Anyone wishing to donate property for the establishment of an independent foundation shall draw up a deed of foundation. The establishment of an independent foundation after the death of the founder shall be provided for in a will.

Section 2

The establishment of a foundation shall be subject to permission. A foundation shall have approved by-laws, and it shall be entered in the register of foundations.

Section 3 (349/1987)

(1) The deed of foundation shall state the purpose of the foundation and its property.

The deed of foundation shall be dated and signed by the founder and attested by two persons. If the founder does not attend to the establishment himself, he shall name the person responsible for said measures.

(2) The provision for the establishment of a foundation contained in a deed of foundation may be revoked by the founder before the foundation is registered. If the founder wants to revoke his provision for the establishment after an application for permission has been filed with the national Board of Patents and Registration, the founder shall submit to the Board of Patent and Registration a written notice of revocation attested by two persons. (1172/1994)

Section 3a (1172/1994)

(1) If the provisions for the establishment of a foundation are contained in a will, the person administering the decedent's estate shall, within three months from the date when he learned of the contents of the will, submit a notice thereof to the court of the testator's last place of residence or, if the testator did not reside in Finland, to Helsinki District Court. The court shall notify the National Board of Patents and Registration of the will.

(2) When the court has been notified of a will referred to in paragraph (1), it shall without delay ascertain if the person named in the will as responsible for the establishment of the foundation consents to undertake the task. If his consent is not obtained or if the person named is unsuitable for the task, the court shall appoint one or more persons for the task. The same shall apply if the founder has not named anyone for the task or if the task is vacant for other reasons. The court shall notify the National Board of Patents and Registration of the appointment. The provisions of the Code of Inheritance (40/1965) on the discharge of an estate administrator shall correspondingly apply to the said person(s).

(3) If permission for the establishment of a foundation provided for in a will has not been applied for within a reasonable period of time after the National Board of Patents and Registration received the notification referred to in paragraph (1) or (2), the National Board of Patents and Registration shall inform the competent court thereof.

Section 4 (400/1964)

(1) The by-laws of a foundation shall contain:

(1) the name of the foundation, which shall contain the word 'foundation' and be clearly distinguishable from other foundations previously registered in the register of foundations;

(2) the municipality where the registered office of the foundation shall be located;

(3) the purpose of the foundation and the means of carrying out that purpose;

(4) the property endowed on the foundation and how it is to be administered;

(5) the number of the trustees and auditors of the foundation as well as their manner of appointment and term of office;

(6) provisions on the signing of the name of the foundation;

(7) the time when the annual accounts of the foundation are to be closed and the accounts and administration audited; and

(8) provisions on the amendment of the by-laws of the foundation and the termination of the foundation. (349/1987)

(2) The foundation may use also its name translated into the other official language of Finland if the translation is contained in the by-laws.

(3) If the founder has issued other instructions concerning the foundation, they shall also be included in the by-laws.

(4) If the founder has died or if he can, for other reasons, not be consulted, the instructions of the founder may be deviated from in the drafting of the by-laws of the foundation only if the instructions are against the law or good practice or if compliance with the instructions would result in by-laws which, under section 17, would have to be amended. If the by-laws cannot be drafted without essentially changing the purpose of the foundation, the establishment of the foundation shall lapse. (349/1987)

Section 5 (400/1964)

(1) Application for permission to establish a foundation shall be made to the National Board of Patents and Registration, which shall, at the same time, be requested to confirm the by-laws of the foundation. The application shall be made to the National Board of Patents of Registration in writing and it shall be accompanied by the original deed of foundation or will or an officially certified copy thereof as well as a certificate proving that the will can no longer be contested. The application shall be accompanied also by the by-laws drafted for the foundation. (1172/1994)

(2) Paragraph has been repealed.

(3) The application shall be granted if the purpose of the foundation is useful and the by-laws shall be approved if they have been drafted in compliance with this Act and if they are not against the law or proper behaviour. The application shall, however, not be granted if, under the by-laws, the purpose of the foundation is to carry on a business or if its main purpose evidently is to bring direct financial gain to the founder or a functionary of the foundation, or when the establishment of the foundation would serve to circumvent the provisions concerning a fidei-commissum. The application to establish a foundation shall likewise be rejected if the property endowed on the foundation is below that provided for by decree or grossly disproportionate to the purpose of the foundation. (349/1987)

Section 6 (400/1964)

(1) The register of foundations shall be national; it shall be maintained by the National Board of Patents and Registration. The provisions in sections 10 and 11 of the Business Information Act (244/2001; yritys- ja yhteisötietolaki) apply to the notices to be made to the register of foundations. Section 14 of the Business Information Act applies to persons responsible for the making and signing of a register notice. (248/2001)

(2) A notice on the registration of a foundation shall be made within six months from the date when the permission of establishment was granted. The notice shall contain: (248/2001)

(1) the full name, citizenship, place of residence and Finnish social security code or, in its absence, the date of birth of the chairman and each member and deputy member of the board of trustees; (1172/1994)

(2) confirmation by the trustees and certificate of the auditors stating that the movable property bestowed on the foundation is in the possession of the trustees;

(3) a certified copy of a deed of conveyance regarding the real property bestowed on the foundation, which shall be signed also by the person who has received the property on behalf of the foundation;

(4) the full name, citizenship, place of residence and Finnish social security code or, in its absence, the date of birth of any person authorised to sign the name of the foundation either by himself or together with another person; as well as (1172/1994)

(5) the postal address of the foundation. (349/1987)

(3) If notice to register a foundation based on a deed of foundation has not been made within the period stipulated or if the registration of a foundation has been denied and said decision is no longer subject to ordinary forms of appeal, the permission of establishment shall lapse. For special reasons, the National Board of Patents and Registration may grant an extension to the period stipulated for the registration. (1172/1994)

(4) If notice to register a foundation based on a will has not been made within the period stipulated, the National Board of Patents and Registration may impose the threat of a fine upon the trustees chosen for the foundation to enforce the obligation. The fine shall be ordered payable by the National Board of Patents and Registration. (1172/1994)

(5) If the information accompanying the notice is found proper, the foundation shall be registered without delay. (349/1987)

(6) Paragraph has been repealed.

(7) If a foundation that has been granted permission of establishment is not registered, any contracts relating to the conveyance of property to the foundation shall lapse. (349/1987)

Section 7 (400/1964)

(1) The register of foundations shall contain:

(1) the name, purpose and postal address of the foundation as well as the place of its registered office;

(2) the full name, citizenship, place of residence and social security code or date of birth of the chairman and each member and deputy member of the board of trustees of the foundation and of each person authorised to sign the name of the foundation and, if the members of the board of trustees of another foundation or the members of the board of directors of a company or other establishment are to function as the trustees of the foundation, a statement thereof as well as the registration number of the organisation or company and the register in which it is registered. (1172/1994)

(1615/1992)

(2) If the by-laws of the foundation contain a provision on the translation of the name of the foundation, this shall also be entered in the register.

Section 8

(1) When a foundation has been registered, it can acquire rights and undertake obligations as well as sue and be sued in its own name.

(2) Anyone who enters into a contract in the name of a foundation before the foundation is registered shall be liable therefor as for his own debt. If several have concluded said contract, their liability shall be joint and several.

Section 8a (400/1964)

A foundation shall not carry on any business that is not referred to in its by-laws and which does not directly further its purpose.

Chapter 2 — Administration of the foundation

Section 9 (349/1987)

(1) A foundation shall have a board of trustees with a chairman and a minimum of two other members. The board of trustees of another Finnish foundation or the board of directors of a Finnish corporation or establishment may also function as the board of trustees as provided for in the by-laws. An authority may also function as the board of trustees or its member. The by-laws may stipulate for deputy members to be elected for the members of the board of trustees. The provisions on a member shall, where appropriate, apply to a deputy member of the board of trustees.

(2) The members of the board of trustees and the persons authorised to sign the name of the foundation shall be resident in the European Economic Area. At least one of the persons referred to in section 10(3) shall be resident in Finland. The Ministry of Trade and Industry may grant the foundation an exception of the provisions laid down herein. (1172/1994)

(3) No one who lacks legal competence or is bankrupt may function as a member of the board of trustees or sign the name of the foundation.

Section 10 (349/1987)

(1) The board of trustees shall attend to the affairs of the foundation in compliance with the law and the by-laws of the foundation. The foundation shall be represented by the board of trustees.

(2) The board of trustees shall specifically attend to the proper management of the affairs of the foundation and a secure and profitable investment of the assets of the foundation. The assets shall not be lent to any of the following persons:

(1) a partner, a director/trustee, a supervisor, the chief executive officer, or a person in a comparable position, in the foundation or a corporation within the same corporate group or a cross-held corporation, as referred to in the Accounting Act, or a person responsible for the accounts or financial management of the foundation or corporation or the supervision of the same;

(2) a person in the employment or otherwise in the service of the foundation or a corporation or person referred to in subparagraph (1); or

(3) the spouse, domestic partner, brother, sister, direct ascendant or direct descendant of a person referred to in subparagraph (1) or the direct ascendant or direct descendant of the spouse, or a brother-in-law or sister in-law of the person referred to in subparagraph (1). (178/1996)

(3) A summons or other communication shall be deemed to have reached the foundation when it is served upon the chairman of the board of trustees or to a person authorised to sign the name of the

foundation either by himself or together with another person.

Section 10a (349/1987)

The by-laws of the foundation may stipulate that, in addition to the board of trustees, another body or a functionary of the foundation may make decisions on matters specified in the by-laws. The by-laws may also stipulate that a member of the board of trustees or a functionary of the foundation may sign the name of the foundation or that the board of trustees may authorise a person referred to above or some other person to do so.

Section 10b (248/2001)

If the foundation has a body referred to in section 10a, which is not appointed or supervised by another body of the foundation and which the by-laws have entrusted with exclusive decision-making power on certain matters, such as the appointment of, as well as control and supervision of, the board of trustees or the authority to decide on the activities of an establishment maintained by the foundation, said body as well as its members and deputy members shall correspondingly be governed by the provisions of section 6(2)(1), section 9(2) and (3) and section 14 on the board of trustees and its members. A notice of the replacement of a member or deputy member of a body referred to in this section shall be submitted to the National Board of Patents and Registration.

Section 11 (349/1987)

(1) Unless otherwise provided in this Act or the by-laws, the following provisions shall apply to the meetings of the bodies of the foundation:

(1) the meeting shall have a quorum when more than half of the members of the body are present;

(2) a motion supported by more than half of the members present shall be carried; and

(3) in the case of a tie, appointments shall be cast by drawing lots and in other cases the chairman shall have the casting vote.

(2) A record shall be kept of a meeting of a body of the foundation and all the resolutions and votes shall be entered therein. The record shall be signed by the chairman of the meeting and at least one of the participants chosen for the task.

(3) A member of a body of the foundation or a functionary of the foundation shall not participate in the handling of a contract between himself and the foundation. Nor shall he participate in the handling of a contract between the foundation and a third person if he stands essentially to gain thereby and if there is a conflict of interest between himself and the foundation. The above provisions on a contract shall apply also to litigation or other representation of the foundation.

(4) The members of the bodies of the foundation may be paid a reasonable fee for attending the meetings and other reasonable fee for other work done on behalf of the foundation unless such payment is prohibited by the by-laws.

(5) The annual accounts shall be drawn up as provided in the Accounting Act (1336/1997). In addition to what is provided in the Accounting Act, the annual report shall indicate in general terms how the foundation has proceeded in furtherance of its purpose during the financial year. (299/1998)

Section 12 (942/1994)

(1) The audit of a foundation shall be governed by the provisions of this chapter and the Auditing Act (936/1994).

(2) A foundation shall have a minimum of two auditors and two deputy auditors to audit its accounts and administration.

(3) At least one of the auditors and his deputy shall be a certified auditor unless the Ministry of Trade and Industry grants an exception for special reasons.

(4) In addition to what is provided in the provisions of the Auditing Act, the audit report shall contain a specific statement on

(1) whether the assets of the foundation have been properly invested;

(2) whether the fees paid to the members of the bodies of the foundation are to be deemed reasonable; and

(3) whether the annual accounts and the annual report give a true and fair view of the finances and activities of the foundation.

Section 12a (349/1987)

(1) A member of a body of the foundation, as well as a functionary and auditor of the foundation shall be liable to compensate all damage caused to the foundation in office either wilfully or negligently. The same shall apply to damage caused to a third party by an act against this Act or the by-laws of the foundation. (942/1994)

(2) The adjustment of damages as well as the allocation of the liability in damages among two or more persons liable for the damages shall be governed by the provisions of the Tort Liability Act (412/1974).

(3) The liability in damages of an employee shall be governed by specific provisions thereon.

Chapter 3 — Supervision of the foundation

Section 13 (1172/1994)

(1) The National Board of Patents and Registration shall supervise that the administration of the foundation complies with the law and the by-laws of the foundation.

(2) Within six months from the end of each financial year, the foundation shall submit to the National Board of Patents and Registration certified copies of its income statement and balance sheet and their appendices, and of the itemisation of the balance sheet and its annual report and audit report. When necessary for its supervision, the foundation shall submit also other information on its activities to the National Board of Patents and Registration.

(3) For special reasons, the National Board of Patents and Registration shall have the right to audit the books and administration of the foundation as well as make other inspection of its activities. Upon the request of the National Board of Patents and Registration, an auditor of the foundation shall give to the National Board of Patents and Registration information on the activities of the foundation that he has learned in the course of his duties.

Section 14 (1172/1994)

(1) Should the National Board of Patents and Registration notice that the board of trustees of the foundation has acted against the law or the by-laws of the foundation or that it has neglected its duties under this Act, the National Board of Patents and Registration may order the board of trustees to undertake measures to rectify the situation or issue an injunction relating to the enforcement of such faulty decision. The national Board of Patents and Registration may impose the threat of a fine to enforce the order or injunction. The fine shall be ordered payable by the National Board of Patents and Registration.

(2) Should the board of trustees or its member continuously or otherwise grossly act against the law or the by-laws, the court of the locality where the registered office of the foundation is located may, upon a request made by the National Board of Patents or Registration relieve the board of trustees or its member from office.

(3) If the board of trustees or its member has caused damage to the foundation in the manner referred to in section 12a, the National Board of Patents and Registration may bring an action for damages in the court of the place where the registered office of the foundation is located.

(4) If a member of the board of trustees has in the said office made himself guilty of a punishable act, the national Board of Patents and Registration may inform the public prosecutor thereof to have charges brought for the said act in the court of the place where the registered office of the foundation is located.

Section 14a (400/1964)

(1) If, in a case referred to in section 14(2), the board of trustees of a foundation is relieved from office, the court shall appoint one or more temporary trustees to administer the foundation until a new board of trustees is elected in accordance with the by-laws of the foundation. The court may order that the decision to relieve the board of trustees or its member(s) and to appoint temporary trustees shall be complied with at once irrespective of appeal.

(2) If a foundation is otherwise found to lack a board of trustees, the National Board of Patents and Registration shall appoint one or more temporary trustees to administer the affairs of the foundation until a new board of trustees is elected in accordance with the by-laws of the foundation. (1172/1994)

(3) If, in a case referred to in paragraph (1) or (2), a new board of trustees cannot be elected in accordance with the by-laws, the National Board of Patents and Registration shall request the District Court of the place where the registered office of the foundation is located to appoint a new board of trustees for the foundation. In the appointment of the board of trustees, regard shall, as far as possible, be had to the provisions of the by-laws of the foundation on the composition and term of office of the board of trustees. Where necessary, the new board of

trustees shall have the right to invite new trustees. (1172/1994)

(4) The temporary trustees referred to in paragraphs (1) and (2) shall be entitled to a compensation for their duties from the assets of the foundation.

Section 15 (1172/1994)

The founder or another person for whose benefit the activities of the foundation accrue, who considers that the board of trustees of the foundation has acted against the law or the by-laws of the foundation, shall have the right to submit a request for rectification to the National Board of Patents and Registration. If the request is based on valid grounds, the National Board of Patents and Registration shall request the board of trustees to submit an explanation and, where necessary, undertake the measures necessary.

Section 16

The provisions of this chapter shall not apply to a foundation with a public authority or the board of directors of a public establishment as its board of trustees. The supervision of said foundation shall be governed by the provisions on the supervision of said public authority or public establishment.

Chapter 4 — Amendment of the by-laws and merger and termination of a foundation (349/1987)

Section 17 (400/1964)

(1) If the amendment of the by-laws of a foundation is deemed necessary because of changed circumstances or other reasons, the foundation shall attend to the amendment and apply to the National Board of Patents and Registration for approval of the amendment. (1172/1994)

(2) The purpose of the foundation may be amended only if the use of the assets of the foundation for the original purpose is impossible or essentially more difficult, totally or essentially useless because of the small value of the assets or another reason, or against the law or good practice. The new purpose may not be essentially different from the original purpose. Unless otherwise stipulated in the by-laws of the foundation, the decision on the amendment of the purpose of the foundation shall require a majority of three-fourths of the votes. (349/1987)

(3) If the use of the assets of the foundation for its purpose is totally or essentially useless because of the small value of the assets, the by-laws of the foundation may be amended also by setting a period of time within which the remaining assets are to be used and the foundation is to be terminated. An application to the National Board of Patents and Registrations for approval of said amendment of the by-laws shall be accompanied by a certificate of the auditors of the foundation confirming that all the known debts of the foundation have been paid or that the known creditors of the foundation have consented to making the foundation a temporary one. (1172/1994)

(4) The National Board of Patents and Registrations shall ex officio and without separate application enter an approved amendment of the by-laws in the register of foundations. The amended by-laws shall not be applied before they have been entered in the register. (1172/1994)

Section 17a (349/1987)

(1) A foundation (merging foundation) may merge in another foundation with an essentially similar purpose (acquiring foundation) so that the assets and liabilities of the merging foundation are transferred to the acquiring foundation if the achievement of the purpose of the foundation is essentially improved through the merger. In the acquiring foundation, the merger agreement shall be approved in accordance with the provisions of its by-laws on the amendment of the by-laws and in the merging foundation it shall be approved in the manner referred to in section 17(2).

(2) Within four months from the date when the foundations have approved the merger agreement, they shall apply to the National Board of Patents and Registration for approval of the merger and the amendment of the by-laws of the acquiring foundation, if any. The amendment of the by-laws shall, however, not be entered in the register until the permission of the court for the merger referred to in section 17b(4) has been communicated to the National Board of Patents and Registration. (1172/1994)

Section 17b (349/1987)

(1) Within four months from the date when the National Board of Patents and Registration has granted the application for merger, the foundations shall apply to the court of the place where the registered office of the merging foundation is located for permission to enforce the merger agreement under threat that the merger

shall otherwise be deemed lapsed. The application shall be accompanied by proof of the permission granted by the national Board of Patents and Registration as well as a list of the known creditors of the merging foundation and their postal addresses. (1172/1994)

(2) The court shall issue a public notice to all the known and unknown creditors of the merging foundation requesting anyone who wishes to oppose the application to notify the court thereof in writing no later than one month prior to the date of the hearing under threat that he shall otherwise be deemed to have consented to the application. The notice shall be posted on the bulletin board of the court four months prior to the date of the hearing and published by the court in the Official Gazette twice: the first time no later than three months and the second time no later than two months prior to the date of the hearing. The court shall separately notify the County Government and all the known creditors of the application.

(3) The application shall be granted if none of the creditors oppose it or if it is shown on the date of the hearing that all the creditors opposing the application have received full payment of their claims or that collateral accepted by the court has been placed for their claims.

(4) Within four months from the date when the consent of the court becomes final, the foundations shall submit notice thereof to the National Board of Patents and Registration for registration under threat that the merger shall lapse. The merger shall be deemed completed when the notice has been entered in the register of foundations. (1172/1994)

Section 17c (349/1987)

(1) Under the prerequisites stipulated in section 17a(1), foundations may merge also by two or more foundations agreeing to transfer their assets and liabilities to a new foundation to be established. The above provisions on the deed of foundation shall apply to the merger agreement, which shall also contain the by-laws of the new foundation.

(2) Within four months from the date when the foundations have approved the merger agreement, they shall apply to the National Board of Patents and Registration for approval of the merger, regarding which the provisions of sections 5 and 17a shall be applied. Within four months from the date when the National Board of Patents and Registration has granted the application for merger, the foundations shall apply to the court of the place where the registered office of the new foundation is to be located for the permission referred to in section 17b to enforce the merger. (1172/1994)

(3) Within four months from the date when the decision of the court granting the permission becomes final, the foundations shall submit the notice referred to in section 6, at the threat that the merger shall lapse. The merger shall be deemed completed when the new foundation is entered in the register of foundations.

Section 18 (1172/1994)

(1) A foundation that has been established for a fixed period of time or subject to certain prerequisites shall, when the period has expired or the prerequisites no longer exist, be terminated upon permission of the National Board of Patents and Registration. The same shall apply if the foundation no longer has any assets.

(2) If a situation referred to in section 17(2) has arisen, but the by-laws of the foundation cannot be amended, and if the use of the assets of the foundation for the purpose stipulated is useless even if the foundation is changed into a temporary one, the foundation shall likewise, upon permission of the National Board of Patents and Registration, be terminated.

(3) If the activities of the foundation have continuously been against the law or its by-laws, the court of the place where the registered office of the foundation is located, may, for exceptional reasons and upon a request made by the National Board of Patents and Registration, order that the foundation be forthwith terminated.

Section 19 (349/1987)

(1) If a foundation is terminated upon the consent of the National Board of Patents and Registration or because the foundation had been changed into a temporary one, the board of trustees of the foundation shall attend to the measures necessary for the termination unless the National Board of Patents and Registration considers it necessary to appoint one or more liquidators to replace the board of trustees. If the court orders a foundation to be terminated, it shall appoint one or more liquidators. The court may also order that the liquidators forthwith take possession of the assets of the foundation even if the decision on the termination of the foundation is not yet final. The provisions on the board of trustees and its members shall correspondingly be applied to the liquidators. (1172/1994)

(2) The board of trustees or the liquidators of the foundation shall request that a public notice be given to the unknown creditors of the foundation unless this is evidently unnecessary. When the measures of termination have been completed, the board of trustees or the liquidators shall forthwith submit a final account to the National Board of Patents and Registration. The foundation shall be deemed terminated when the National Board of Patents and Registration, after approving the final accounts, has entered the termination in the register of foundations. (1172/1994)

(3) If the foundation, after its debts have been pa id, still has assets and if the by-laws do not provide for their use, they shall devolve on the State, which shall without delay transfer the assets to be used to further a purpose related to that of the foundation.

Chapter 5 — Miscellaneous provisions

Section 20 has been repealed.

Section 21

A State authority shall not function as the board of trustees of a foundation or as member without permission of the competent Ministry, nor a municipal or ecclesiastical authority without permission of the executive board of the municipality or the cathedral chapter or the Episcopal meeting.

Section 22 (349/1987)

(1) Notice of any change in the members of the board of trustees of a foundation or persons authorised to sign the name of the foundation as well as any change in the postal address of the foundation shall be made for entry in the register of foundations. (248/2001)

(2) The court shall notify the National Board of Patents and Registration of the appointment of a temporary trustee or new board of trustees referred to in section 14a as well as of a decision relating to the appointment of a liquidator referred to in section 19(1). These decisions as well as decisions made by the National Board of Patents and Registration under section 14a(2) and section 19(1) shall be entered in the register of foundations. (1172/1994)

(3) When a court has made a decision referred to in section 18(3) or when the assets of a foundation have been surrendered in bankruptcy, a bankruptcy application has been withdrawn, a decision on bankruptcy has been reversed or a bankruptcy has lapsed due to insufficient assets, the court shall likewise notify the National Board of Patents and Registration thereof for entry in the register of foundations. If no assets remain after bankruptcy proceedings, the foundation shall be deemed terminated when the bankruptcy administration has submitted its final accounts. The bankruptcy administration shall without delay notify the National Board of Patents and Registration of the termination of the foundation for entry in the register of foundations. (1172/1994)

Section 22a (248/2001)

The National Board of Patents and Registration has the right to updates of foundations' contact information from the Business Information System.

Section 23 has been repealed.

Section 24 (1172/1994)

(1) A person carrying out duties referred to in this Act shall hold confidential the itemisation of the balance sheets of the foundation as well as any information he has received in the course of his tasks on the business or trade secrets, economic position of personal circumstances of another unless the party for whose benefit the secrecy obligation has been provided consents to their disclosure.

(2) Confidential information and documents may be disclosed to a criminal investigation authority and the public prosecutor or other authority entitled to obtain them under the law.

Section 24a has been repealed.

Section 25 (1172/1994)

Appeal against a decision made by the National Board of Patents and Registration under this Act shall be governed by the provisions of the Act on Administrative Judicial Proceedings (586/1996).

Section 26 has been repealed.

Section 27 (248/2001)

(1) An administrator of a decedent's estate who deliberately or negligently fails to make the notice

referred to in section 3a(1) within the period stipulated therefor, shall be sentenced to a fine, unless the act is of minor significance or a more severe punishment for the act is stipulated elsewhere in the law.

(2) Section 19(1) of the Business Information Act applies to the penalty for a failure to make a notice referred to in section 22, unless the failure is to be deemed to constitute misconduct in public office.

Section 28

(1) Notice to register an independent foundation established prior to the entry into force of this Act shall be made to the Ministry of Justice within two years. If this is neglected, those guilty of the neglect shall be sentenced to a fine of thirty unit fines at the most and the court shall order them, under threat of a fine, to comply with their obligation within the period stipulated.

(2) If a foundation referred to in paragraph (1) has legally approved by-laws, new by-laws need not be drafted.

Section 29

This Act shall not apply to public-law foundations.

Section 30

This Act shall enter into force on 1 January 1931. Further provisions on the application of this Act shall be issued by Decree.

7.3. Law on NPO

There is no specific law on NPOs in Finland.

7.4. Law on NGO

There is no specific law on NGO in Finland.

7.5. Law on other legal forms

There are non laws on other legal forms in English in Finland.

7.6. Other laws

7.6.1. Money Collection Act

The Money Collection Act "Rahankeräyslaki" 31.7.1980/590[346]

Eduskunnan päätöksen mukaisesti säädetään:

1 §

Rahankeräyksellä tarkoitetaan tässä laissa toimintaa, jossa yleisöön vetoamalla kerätään vastikkeetta rahaa. Vastikkeena ei pidetä merkkiä, tarraa tai muuta keräyksen tai sen toimeenpanijan tunnusta, jolla on vähäinen taloudellinen arvo taikka jonka arvo suhteessa lahjoitukseen on alhainen. (5.8.1983/681)

2 momentti on kumottu L:lla 5.8.1983/681.

Tätä lakia ei sovelleta uskonnollisen yhdyskunnan järjestämän julkisen uskonnonharjoituksen yhteydessä siihen osallistuvien keskuudessa suoritettavaan kolehdin kantoon.

Lisämaksullisilla erikoispostimerkeillä ja korusähkösanomilla suoritettavasta rahankeräyksestä säädetään asetuksella.

2 § (5.8.1983/681)

Rahankeräys saadaan toimeenpanna varojen hankkimiseksi sosiaalista, sivistyksellistä tai aatteellista tarkoitusta taikka yleistä kansalaistoimintaa varten.

Rahankeräyksen yhteydessä ei saa järjestää arvontaa, kilpailua tai muuta sellaista toimintaa, jossa luvataan erityisessä toimituksessa määräytyvää, sattumaan perustuva voitto.

Rahankeräystä ei saa toimeenpanna ketjukirjeiden avulla tai siihen verrattavalla tavalla siten, että osallistuvalle luvataan osa rahoista tai muu taloudellinen etu. Tällaiseen keräykseen osallistuminen ja sen muunlainen edistäminen on kielletty.

3 § (5.8.1983/681)

Rahankeräyksen toimeenpanemiseen on saatava rahankeräyslupa.

[346] http://www.finlex.fi/fi/laki/ajantasa/1980/19800590, 18 November 2004.

Rahankeräyslupaa ei tarvita yleisen kokouksen järjestäjän kokoukseen osallistuvien keskuudessa suorittamaan keräykseen.

Rahankeräyslupaa ei myöskään tarvita yksityisen henkilön merkkipäivään tai naapuriapuun liittyvään rahankeräykseen.

4 §

Rahankeräyslupa voidaan antaa ainoastaan kotimaiselle rekisteröidylle yhdistykselle tai muulle yhteisölle taikka itsenäiselle säätiölle, jolla on yksinomaan sosiaalinen, sivistyksellinen tai muu aatteellinen tarkoitus (luvan saaja).

Rahankeräyslupa voidaan antaa silloin, kun keräys on yleisen edun kannalta tarkoituksenmukainen. Rahankeräyslupaan voidaan liittää keräyksen toteuttamista koskevia ehtoja. (5.8.1983/681)

5 §

Rahankeräysluvan antaa hakijan kotipaikan lääninhallitus. Yhden poliisipiirin alueella toimeenpantavaan rahankeräykseen antaa kuitenkin luvan poliisipiirin päällikkö (luvan myöntäjä).

Rahankeräyslupa annetaan enintään vuoden määräajaksi. Määräaikaa ei saa jatkaa.

6 § (23.11.2001/1049)

Sisäasiainministeriö vastaa rahankeräystoiminnan yleisestä valvonnasta ja rahankeräysten toimeenpanon tilastoimisesta.

Sisäasiainministeriö voi antaa rahankeräysten toimeenpanoa koskevia lausuntoja ja ohjeita.

7 §

Luvan saajan on laadittava rahankeräyksestä tilitys, joka on toimitettava asetuksella säädettävässä määräajassa luvan myöntäjälle.

2 momentti on kumottu L:lla 23.11.2001/1049.

8 §

Jos rahankeräystä toimeenpantaessa ei noudateta tätä lakia tai sen nojalla annettuja säännöksiä tai määräyksiä, luvan myöntäjä voi peruuttaa rahankeräysluvan. Ennen luvan peruuttamista luvan saajalle on varattava tilaisuus tulla kuulluksi.

Jos rahankeräyksen toimeenpanossa tai tilityksessä ilmenee pienehköjä virheitä tai puutteita, luvan myöntäjä voi määrätä ne oikaistaviksi.

9 §

Jos luvan saaja katsoo, että rahankeräysvaroja tai osaa niistä ei voida käyttää rahankeräysluvassa mainittuun tarkoitukseen tai että se ei ole elosuhteitten muuttumisen johdosta tai muusta vastaavasta syystä tarkoituksenmukaista, sen on pyydettävä luvan myöntäjältä oikeutta näiden varojen käyttötarkoituksen muuttamiseen.

10 §

Kokonaan tai osaksi rahankeräysvaroilla hankitun kiinteistön tai laitoksen luovutuksesta toiselle taikka laitoksen toiminnan lopettamisesta tai sen muuttamisesta siten, että toiminta ei vastaa rahankeräysluvassa mainittua tarkoitusta, on luvan saajan tai kiinteistön taikka laitoksen omistajan tehtävä ilmoitus. Ilmoituksesta säädetään tarkemmin asetuksella. Ilmoitusta ei kuitenkaan tarvitse tehdä, jos rahankeräyksen päättymisestä on kulunut kymmenen vuotta.

Luvan saaja tai kiinteistön taikka laitoksen omistaja voi pyytää oikeutta omaisuuden käyttötarkoituksen muuttamiseen tai luovutuksesta saatujen varojen uudelleen käyttämiseen. Päätöksen asiasta tekee valtioneuvosto.

Jollei 2 momentissa tarkoitettua oikeutta ole pyydetty tai pyyntöön suostuttu, valtioneuvosto voi määrätä rahankeräysvaroja vastaavan suhteellisen osuuden omaisuuden arvosta käytettäväksi rahankeräystä toimitettaessa ilmoitettuun tai sitä lähellä olevaan tarkoitukseen.

11 §

Jos rahankeräyslupa on peruutettu tai tilitys laiminlyöty taikka se on puutteellinen tai varoja ei ole käytetty rahankeräysluvassa mainittuun tarkoitukseen, lääninhallitus voi määrätä toimitsijan, jonka tehtävänä on ottaa kerätyt varat haltuunsa ja tehdä tilitys.

Lääninhallituksen on luovutettava varat alkuperäiseen tai, jollei se ole mahdollista, sitä lähellä olevaan tarkoitukseen. Ennen varojen luovuttamispäätöstä luvan saajalle on varattava tilaisuus tulla kuulluksi.

Toimitsija on tehtävässään lääninhallituksen valvonnan alainen. Luvan saaja vastaa toimittajan määräämisestä aiheutuneista kustannuksista, jotka voidaan suorittaa myös rahankeräysvaroista.

12 §

Joka toimeenpanee muun kuin 3 §:n 2 tai 3 momentissa tarkoitetun rahankeräyksen ilman rahankeräyslupaa, laiminlyö tilityksen tekemisen tai toimeenpanee 2 §:n 3 momentissa tarkoitetun rahankeräyksen, on tuomittava rahankeräysrikoksesta sakkoon tai vankeuteen enintään kuudeksi kuukaudeksi. (5.8.1983/681)

Joka muulla tavoin rikkoo tätä lakia tai sen nojalla annettuja säännöksiä tai määräyksiä, on tuomittava rahankeräysrikkomuksesta sakkoon.

13 § (5.8.1983/681)

Vastoin tämän lain säännöksiä kerätyt varat on tuomittava menetetyiksi. Ketjukirjeiden avulla tai siihen verrattavalla tavalla kerätyt varat voidaan tuomita menetetyiksi, kun ne on jätetty postin tai muun laitoksen taikka henkilön haltuun toimitettavaksi keräyksen toimeenpanijalle, siihen osallistuneelle tai sitä muutoin edistäneelle.

Jos keräys tapahtuu ulkomailta eikä ketään voida panna syytteeseen Suomessa, menetetyksi tuomitsemista koskeva asia on käsiteltävä Helsingin [raastuvanoikeudessa].

14 §

Tarkemmat säännökset tämän lain täytäntöönpanosta ja soveltamisesta annetaan asetuksella.

15 §

Tämä laki tulee voimaan 1 päivänä lokakuuta 1980.

Tällä lailla kumotaan eräänlaisten rahankeräysten kieltämisestä 10 päivänä maaliskuuta 1939 annettu laki (65/39) ja 22 päivänä joulukuuta 1949 annettu rahankeräysasetus (815/49).

Muutossäädösten voimaantulo ja soveltaminen:

5.8.1983/681:

Tämä laki tulee voimaan 1 päivänä syyskuuta 1983.

HE 3/83, tavk.miet. 2/83, svk.miet. 13/83

23.11.2001/1049:

Tämä laki tulee voimaan 1 päivänä tammikuuta 2002.

8. France

8.1. Law on Associations

8.1.1. Law on non-profit associations

Associations Act "Loi du 1 juillet 1901 loi relative au contrat d'association version consolidée au 2 août 2003"[347]

Titre I.

Article 1

L'association est la convention par laquelle deux ou plusieurs personnes mettent en commun, d'une façon permanente, leurs connaissances ou leur activité dans un but autre que de partager des bénéfices. Elle est régie, quant à sa validité, par les principes généraux du droit applicables aux contrats et obligations.

Article 2

Les associations de personnes pourront se former librement sans autorisation ni déclaration préalable, mais elles ne jouiront de la capacité juridique que si elles se sont conformées aux dispositions de l'article 5.

Article 3

[347] http://www.legifrance.gouv.fr/texteconsolide/AAEBG.htm, 7 December 2004.

Toute association fondée sur une cause ou en vue d'un objet illicite, contraire aux lois, aux bonnes moeurs, ou qui aurait pour but de porter atteinte à l'intégrité du territoire national et à la forme républicaine du gouvernement, est nulle et de nul effet.

Article 4

Tout membre d'une association qui n'est pas formée pour un temps déterminé peut s'en retirer en tout temps, après paiement des cotisations échues et de l'année courante, nonobstant toute clause contraire.

Article 5

Toute association qui voudra obtenir la capacité juridique prévue par l'article 6 devra être rendue publique par les soins de ses fondateurs.

La déclaration préalable en sera faite à la préfecture du département ou à la sous-préfecture de l'arrondissement où l'association aura son siège social. Elle fera connaître le titre et l'objet de l'association, le siège de ses établissements et les noms, professions et domiciles et nationalités de ceux qui, à un titre quelconque, sont chargés de son administration ou de sa direction. Deux exemplaires des statuts seront joints à la déclaration. Il sera donné récépissé de celle-ci dans le délai de cinq jours.

Lorsque l'association aura son siège social à l'étranger, la déclaration préalable prévue à l'alinéa précédent sera faite à la préfecture du département où est situé le siège de son principal établissement.

L'association n'est rendue publique que par une insertion au Journal officiel, sur production de ce récépissé.

Les associations sont tenues de faire connaître, dans les trois mois, tous les changements survenus dans leur administration ou direction, ainsi que toutes les modifications apportées à leurs statuts.

Ces modifications et changements ne sont opposables aux tiers qu'à partir du jour où ils auront été déclarés.

Les modifications et changements seront en outre consignés sur un registre spécial qui devra être présenté aux autorités administratives ou judiciaires chaque fois qu'elles en feront la demande.

Article 6

Toute association régulièrement déclarée peut, sans aucune autorisation spéciale, ester en justice, recevoir des dons manuels ainsi que des dons d'établissements d'utilité publique, acquérir à titre onéreux, posséder et administrer, en dehors des subventions de l'Etat, des régions, des départements, des communes et de leurs établissements publics :

1° Les cotisations de ses membres ou les sommes au moyen desquelles ces cotisations ont été rédimées, ces sommes ne pouvant être supérieures à 16 euros;

2° Le local destiné à l'administration de l'association et à la réunion de ses membres ;

3° Les immeubles strictement nécessaires à l'accomplissement du but qu'elle se propose.

Les associations déclarées qui ont pour but exclusif l'assistance, la bienfaisance, la recherche scientifique ou médicale peuvent accepter les libéralités entre vifs ou testamentaires dans des conditions fixées par décret en Conseil d'Etat.

Lorsqu'une association donnera au produit d'une libéralité une affectation différente de celle en vue de laquelle elle aura été autorisée à l'accepter, l'acte d'autorisation pourra être rapporté par décret en Conseil d'Etat.

Article 7

En cas de nullité prévue par l'article 3, la dissolution de l'association est prononcée par le tribunal de grande instance, soit à la requête de tout intéressé, soit à la diligence du ministère public. Celui-ci peut assigner à jour fixe et le tribunal, sous les sanctions prévues à l'article 8, ordonner par provision et nonobstant toute voie de recours, la fermeture des locaux et l'interdiction de toute réunion des membres de l'association.

En cas d'infraction aux dispositions de l'article 5, la dissolution peut être prononcée à la requête de tout intéressé ou du ministère public.

Article 8

Seront punis d'une amende prévue par le 5° de l'article 131-13 du code pénal pour les contraventions de 5è classe en première

infraction, et, en cas de récidive, ceux qui auront contrevenu aux dispositions de l'article 5.

Seront punis de trois ans d'emprisonnement et de 45000 euros d'amende, les fondateurs, directeurs ou administrateurs de l'association qui se serait maintenue ou reconstituée illégalement après le jugement de dissolution.

Seront punies de la même peine toutes les personnes qui auront favorisé la réunion des membres de l'association dissoute, en consentant l'usage d'un local dont elles disposent.

Article 9

En cas de dissolution volontaire, statutaire ou prononcée par justice, les biens de l'association seront dévolus conformément aux statuts ou, à défaut de disposition statutaire, suivant les règles déterminées en assemblée générale.

Titre II.

Article 10

Les associations peuvent être reconnues d'utilité publique par décret en Conseil d'Etat à l'issue d'une période probatoire de fonctionnement d'une durée au moins égale à trois ans.

La reconnaissance d'utilité publique peut être retirée dans les mêmes formes.

La période probatoire de fonctionnement n'est toutefois pas exigée si les ressources prévisibles sur un délai de trois ans de l'association demandant cette reconnaissance sont de nature à assurer son équilibre financier.

Article 11

Ces associations peuvent faire tous les actes de la vie civile qui ne sont pas interdits par leurs statuts, mais elles ne peuvent posséder ou acquérir d'autres immeubles que ceux nécessaires au but qu'elles se proposent. Toutes les valeurs mobilières d'une association doivent être placées en titres nominatifs, en titres pour lesquels est établi le bordereau de références nominatives prévu à l'article 55 de la loi n° 87-416 du 17 juin 1987 sur l'épargne ou en valeurs admises par la Banque de France en garantie d'avances.

Elles peuvent recevoir des dons et des legs dans les conditions prévues par l'article 910 du code civil. Les immeubles compris dans un acte de donation ou dans une disposition testamentaire qui ne seraient pas nécessaires au fonctionnement de l'association sont aliénés dans les délais et la forme prescrits par le décret ou l'arrêté qui autorise l'acceptation de la libéralité ; le prix en est versé à la caisse de l'association. Cependant, elles peuvent acquérir, à titre onéreux ou à titre gratuit, des bois, forêts ou terrains à boiser.

Article 12

Abrogé par Décret du 12 avril 1939 (JORF 16 avril 1939).

Titre III.

Article 13

Toute congrégation religieuse peut obtenir la reconnaissance légale par décret rendu sur avis conforme du Conseil d'Etat; les dispositions relatives aux congrégations antérieurement autorisées leur sont applicables.

La reconnaissance légale pourra être accordée à tout nouvel établissement congréganiste en vertu d'un décret en Conseil d'Etat.

La dissolution de la congrégation ou la suppression de tout établissement ne peut être prononcée que par décret sur avis conforme du Conseil d'Etat.

Article 14

Abrogé par Loi du 3 septembre 1940 (JORF 4 septembre 1940).

Article 15

Toute congrégation religieuse tient un état de ses recettes et dépenses ; elle dresse chaque année le compte financier de l'année écoulée et l'état inventorié de ses biens meubles et immeubles.

La liste complète de ses membres, mentionnant leur nom patronymique, ainsi que le nom sous lequel ils sont désignés dans la congrégation, leur nationalité, âge et lieu de naissance, la date de leur entrée, doit se trouver au siège de la congrégation.

Celle-ci est tenue de représenter sans déplacement, sur toute réquisition du préfet à lui même ou à son délégué, les comptes, états et listes ci-dessus indiqués.

Seront punis des peines portées au paragraphe 2 de l'article 8 les représentants ou directeurs d'une congrégation qui auront fait des communications mensongères ou refusé d'obtempérer aux réquisitions du préfet dans les cas prévus par le présent article.

Article 16

Abrogé par Loi n°42-505 du 8 avril 1942 (JORF 17 avril 1942).

Article 17

Sont nuls tous actes entre vifs ou testamentaires, à titre onéreux ou gratuit, accomplis soit directement, soit par personne interposée, ou toute autre voie indirecte, ayant pour objet de permettre aux associations légalement ou illégalement formées de se soustraire aux dispositions des articles 2, 6, 9, 11, 13, 14 et 16.

La nullité pourra être prononcée soit à la diligence du ministère public, soit à la requête de tout intéressé.

Article 18

Les congrégations existantes au moment de la promulgation de la présente loi, qui n'auraient pas été antérieurement autorisées ou reconnues, devront, dans le délai de trois mois, justifier qu'elles ont fait les diligences nécessaires pour se conformer à ses prescriptions.

A défaut de cette justification, elles sont réputées dissoutes de plein droit. Il en sera de même des congrégations auxquelles l'autorisation aura été refusée.

La liquidation des biens détenus par elles aura lieu en justice. Le tribunal, à la requête du ministère public, nommera, pour y procéder, un liquidateur qui aura pendant toute la durée de la liquidation tous les pouvoirs d'un administrateur séquestre.

Le tribunal qui a nommé le liquidateur est seul compétent pour connaître, en matière civile, de toute action formée par le liquidateur ou contre lui.

Le liquidateur fera procéder à la vente des immeubles suivant les formes prescrites pour les ventes de biens de mineurs.

Le jugement ordonnant la liquidation sera rendu public dans la forme prescrite pour les annonces légales.

Les biens et valeurs appartenant aux membres de la congrégation antérieurement à leur entrée dans la congrégation, ou qui leur seraient échus depuis, soit par succession ab intestat en ligne directe ou collatérale, soit par donation ou legs en ligne directe, leur seront restitués.

Les dons et legs qui leur auraient été faits autrement qu'en ligne directe pourront être également revendiqués, mais à charge par les bénéficiaires de faire la preuve qu'ils n'ont pas été les personnes interposées prévues par l'article 17.

Les biens et valeurs acquis, à titre gratuit et qui n'auraient pas été spécialement affectés par l'acte de libéralité à une oeuvre d'assistance pourront être revendiqués par le donateur, ses héritiers ou ayants droit, ou par les héritiers ou ayants droit du testateur, sans qu'il puisse leur être opposé aucune prescription pour le temps écoulé avant le jugement prononçant la liquidation.

Si les biens et valeurs ont été donnés ou légués en vue de gratifier non les congréganistes, mais de pourvoir à une oeuvre d'assistance, ils ne pourront être revendiqués qu'à charge de pourvoir à l'accomplissement du but assigné à la libéralité.

Toute action en reprise ou revendication devra, à peine de forclusion, être formée contre le liquidateur dans le délai de six mois à partir de la publication du jugement. Les jugements rendus contradictoirement avec le liquidateur, et ayant acquis l'autorité de la chose jugée, sont opposables à tous les intéressés.

Passé le délai de six mois, le liquidateur procédera à la vente en justice de tous les immeubles qui n'auraient pas été revendiqués ou qui ne seraient pas affectés à une oeuvre d'assistance.

Le produit de la vente, ainsi que toutes les valeurs mobilières, sera déposé à la Caisse des dépôts et consignations.

L'entretien des pauvres hospitalisés sera, jusqu'à l'achèvement de la liquidation, considéré comme frais privilégiés de liquidation.

S'il n'y a pas de contestation ou lorsque toutes les actions formées dans le délai prescrit auront été jugées, l'actif net est réparti entre les ayants droit.

Le décret visé par l'article 20 de la présente loi déterminera, sur l'actif resté libre après le prélèvement ci-dessus prévu, l'allocation, en capital ou sous forme de rente viagère, qui sera attribuée aux membres de la congrégation dissoute qui n'auraient pas de moyens d'existence assurés ou qui justifieraient avoir contribué à l'acquisition des valeurs mises en distribution par le produit de leur travail personnel.

Article 19

Abrogé par Loi n°92-1336 du 16 décembre 1992 art. 323 (JORF 23 décembre 1992 en vigueur le 1er mars 1994).

Article 20

Un décret déterminera les mesures propres à assurer l'exécution de la présente loi.

Associations reconnues d'utilité publique

8.1.2. Law on non-profit association with recognised public benefit purpose

The non-profit associations with recognised public benefit purposed are governed by the fowllowing rules[348]:

Les associations reconnues d'utilité publique sont une catégorie d'associations, ayant acquis, suite à une procédure d'accréditation, un statut particulier.

Cette reconnaissance, accordée par décret en Conseil d'Etat, concerne les associations, dont la mission d'intérêt général ou d'utilité publique s'étend aux domaines philanthropiques, social, sanitaire, éducatif, scientifique, culturel ou concerne la qualité de la vie, l'environnement, la défense des sites et des monuments, la solidarité internationale.

Les conditions sont strictes :

une pratique d'au moins trois ans comme association déclarée,

la fourniture des comptes pendant cette période et un budget d'au moins 45 734,71 EUR

l'adhésion d'au moins 200 membres,

l'intervention sur un plan national,

des statuts conformes au modèle approuvé par le Conseil d'Etat.

La demande, accompagnée des statuts, doit être faite auprès du ministère de l'Intérieur. Celui-ci fait procéder, s'il y a lieu à l'instruction du dossier. Dans ce cas, la demande est transmise au Conseil d'Etat pour avis.

Capacité juridique

Les associations reconnues d'utilité publique peuvent recevoir, outre des dons manuels, des donations et des legs. Néanmoins, au-delà de ses effets proprement juridiques, la reconnaissance d'utilité publique est perçue par le monde associatif comme un label conférant à l'association qui en bénéficie une légitimité particulière dans son domaine d'action.

Article 10

Les associations peuvent être reconnues d'utilité publique par décret en Conseil d'Etat à l'issue d'une période probatoire de fonctionnement d'une durée au moins égale à trois ans.

La reconnaissance d'utilité publique peut être retirée dans les mêmes formes.

La période probatoire de fonctionnement n'est toutefois pas exigée si les ressources prévisibles sur un délai de trois ans de l'association demandant cette reconnaissance sont de nature à assurer son équilibre financier.

(Art. 10 Loi du 1 juillet 1901)

8.2. Law on Foundations

8.2.1. Law on the development of patronage governing public benefit foundations

Law on the development of patronage "Loi n°87-571 du 23 juillet 1987 sur le développement du mécénat version consolidée au 24 février 2004"[349].

[348] http://vosdroits.service-public.fr/particuliers/F1131.html?n=Vie%20associative&l=N20, 9 December 2004.

[349] http://www.fdf.org/download/loi_87_57.pdf, 6 December 2004.

Article 18

La fondation est l'acte par lequel une ou plusieurs personnes physiques ou morales décident l'affectation irrévocable de biens, droits ou ressources à la réalisation d'une oeuvre d'intérêt général et à but non lucratif.

Lorsque l'acte de fondation a pour but la création d'une personne morale, la fondation ne jouit de la capacité juridique qu'à compter de la date d'entrée en vigueur du décret en Conseil d'Etat accordant la reconnaissance d'utilité publique. Elle acquiert alors le statut de fondation reconnue d'utilité publique.

La reconnaissance d'utilité publique peut être retirée dans les mêmes formes.

Lorsqu'une fondation reconnue d'utilité publique est créée à l'initiative d'une ou plusieurs sociétés commerciales ou d'un ou plusieurs établissements publics à caractère industriel et commercial, la raison sociale ou la dénomination d'au moins l'une ou l'un d'entre eux peut être utilisée pour la désignation de cette fondation.

Les dispositions des trois premiers alinéas du II de l'article 5 de la présente loi sont étendues à toutes les fondations reconnues d'utilité publique.

Article 18-1

La dotation initiale d'une fondation reconnue d'utilité publique peut être versée en plusieurs fractions sur une période maximum de dix ans à compter de la date de publication au Journal officiel du décret qui lui accorde la reconnaissance d'utilité publique.

Article 18-2

Un legs peut être fait au profit d'une fondation qui n'existe pas au jour de l'ouverture de la succession sous la condition qu'elle obtienne, après les formalités de constitution, la reconnaissance d'utilité publique.

La demande de reconnaissance d'utilité publique doit, à peine de nullité du legs, être déposée auprès de l'autorité administrative compétente dans l'année suivant l'ouverture de la succession.

Par dérogation aux dispositions du deuxième alinéa de l'article 18, la personnalité morale de la fondation reconnue d'utilité publique rétroagit au jour de l'ouverture de la succession.

A défaut de désignation par le testateur des personnes chargées de constituer la fondation et d'en demander la reconnaissance d'utilité publique, il est procédé à ces formalités par une fondation reconnue d'utilité publique désignée par le représentant de l'Etat dans la région du lieu d'ouverture de la succession.

Pour l'accomplissement de ces formalités, les personnes mentionnées à l'alinéa précédent ont la saisine sur les meubles et immeubles légués. Elles disposent à leur égard d'un pouvoir d'administration à moins que le testateur ne leur ait conféré des pouvoirs plus étendus.

Article 19 (see below)

Article 20-1

Abrogé par Loi n°2002-5 du 5 janvier 2002 art. 29 1° (JORF 5 janvier 2002).

Article 21

a modifié les dispositions suivantes :

Article 22

Modifié par Ordonnance n°2000-549 du 15 juin 2000 art. 7 (JORF 22 juin 2000)

Des groupements d'intérêt public dotés de la personnalité morale et de l'autonomie financière peuvent être constitués entre deux ou plusieurs personnes morales de droit public ou de droit privé comportant au moins une personne morale de droit public pour exercer ensemble, pendant une durée déterminée, des activités dans les domaines de la culture, de la jeunesse et de l'action sanitaire et sociale, ainsi que pour créer ou gérer ensemble des équipements ou des services d'intérêt commun nécessaires à ces activités.

Les dispositions de l'article 21 de la loi n° 82-610 du 15 juillet 1982 d'orientation et de programmation pour la recherche et le développement technologique de la France sont applicables à ces groupements d'intérêt public.

Article 23

Lorsque la valeur d'un legs fait à l'Etat et portant sur un bien qui présente un intérêt pour le patrimoine historique, artistique ou culturel de la nation excède la quotité disponible, l'Etat peut, quel que soit cet excédent, réclamer en totalité le bien légué, sauf à récompenser préalablement les héritiers en argent.

8.2.2. Law on coporate foundations

Law on corporate foundations "Loi no. 90-559 du 4 juillet 1990 creant les fondations d'entreprise et modifiant les dispositions de la loi no 87-571 sur le developpement du mecenat relatives aux foundations"[350].

Art. 4. - L'article 19 de la loi no 87-571 du 23 juillet 1987 précitée est remplacé par les articles 19 à 19-13 ainsi rédigés:

Art. 19. - Les sociétés civiles ou commerciales, les établissements publics à caractère industriel et commercial, les coopératives ou les mutuelles peuvent créer, en vue de la réalisation d'une oeuvre d'intérêt général, une personne morale, à but non lucratif, dénommée fondation d'entreprise. Lors de la constitution de la fondation d'entreprise, le ou les fondateurs apportent la dotation initiale mentionnée à l'article 19-6 et s'engagent à effectuer les versements mentionnés à l'article 19-7 de la présente loi.

Art. 19-1. - La fondation d'entreprise jouit de la capacité juridique à compter de la publication au Journal officiel de l'autorisation administrative qui lui confère ce statut.

Cette autorisation est réputée acquise à l'expiration d'un délai de quatre mois à compter du dépôt de la demande. Elle fait alors l'objet de la publication prévue à l'alinéa ci-dessus.

La fondation d'entreprise fait connaître à l'autorité administrative toute modification apportée à ses statuts; ces modifications sont autorisées dans les mêmes formes que les statuts initiaux. Lorsque la modification des statuts a pour objet la majoration du programme d'action pluriannuel, la dotation doit être complétée conformément à l'article 19-6.

Art. 19-2. - La fondation d'entreprise est créée pour une durée déterminée qui ne peut être inférieure à cinq ans. Aucun fondateur ne peut s'en retirer s'il n'a pas payé intégralement les sommes qu'il s'est engagé à verser. A l'expiration de cette période, les fondateurs ou certains d'entre eux seulement peuvent décider la prorogation de la fondation pour une durée au moins égale à cinq ans. Lors de la prorogation, les fondateurs s'engagent sur un nouveau programme d'action pluriannuel au sens de l'article 19-7 ci-dessous et complètent, si besoin est, la dotation définie à l'article 19-6. La prorogation est autorisée dans les formes prévues pour l'autorisation initiale.

Art. 19-3. - La fondation d'entreprise peut, sous réserve des dispositions de l'article 19-8, faire tous les actes de la vie civile qui ne sont pas interdits par ses statuts mais elle ne peut acquérir ou posséder d'autres immeubles que ceux nécessaires au but qu'elle se propose. Toutes les valeurs mobilières doivent être placées en titres nominatifs, en titres pour lesquels est établi le bordereau de références nominatives prévu à l'article 55 de la loi no 87-416 du 17 juin 1987 sur l'épargne ou en valeurs admises par la Banque de France en garanties d'avances. Lorsque la fondation d'entreprise détient des actions des sociétés fondatrices ou de sociétés contrôlées par elles, la fondation ne peut exercer les droits de vote attachés à ces actions.

Art. 19-4. - La fondation d'entreprise est administrée par un conseil d'administration composé pour les deux tiers au plus des fondateurs ou de leurs représentants et de représentants du personnel, et pour un tiers au moins de personnalités qualifiées dans ses domaines d'intervention. Les personnalités sont choisies par les fondateurs ou leurs représentants et nommées lors de la première réunion constitutive du conseil d'administration.

Les statuts déterminent les conditions de nomination et de renouvellement des membres du conseil.

Les membres du conseil exercent leur fonction à titre gratuit.

Art. 19-5. - Le conseil d'administration prend toutes décisions dans l'intérêt de la fondation d'entreprise. Il décide des actions en justice, vote le budget, approuve les comptes; il décide des emprunts. Le président représente la fondation en justice et dans les rapports avec les tiers.

Art. 19-6. - La dotation initiale minimale, dont le montant est déterminé dans des conditions fixées par voie réglementaire, est comprise entre le cinquième du montant minimal du programme d'action pluriannuel visé à l'article 19-7 et le cinquième du montant du programme d'action pluriannuel de la fondation d'entreprise.

Art. 19-7. - Les statuts de la fondation d'entreprise comprennent un programme d'action pluriannuel dont le montant ne peut être inférieur à une somme fixée par voie réglementaire. Les sommes correspondantes peuvent être versées en

[350] http://www.fdf.org/download/loi90_559.pdf, 6 December 2004.

plusieurs fractions sur une période maximale de cinq ans. Les sommes que chaque membre fondateur s'engage à verser sont garanties par une caution bancaire.

Art. 19-8. - Les ressources de la fondation d'entreprise comprennent:

1o Les versements des fondateurs à l'exception de la dotation initiale;

2o Les subventions de l'Etat, des collectivités territoriales et de leurs établissements publics;

3o Le produit des rétributions pour services rendus;

4o Les revenus de la dotation initiale et des ressources mentionnés aux 1o, 2o et 3o ci-dessus.

Sous peine de retrait de l'autorisation administrative prévue à l'article 19-1, la fondation d'entreprise ne peut faire appel à la générosité publique; elle ne peut recevoir de dons ni de legs.

Art. 19-9. - Les fondations d'entreprise établissent chaque année un bilan, un compte de résultats et une annexe. Elles nomment au moins un commissaire aux comptes et un suppléant, choisis sur la liste mentionnée à l'article 219 de la loi no 66-537 du 24 juillet 1966 sur les sociétés commerciales, qui exercent leurs fonctions dans les conditions prévues par cette loi; les dispositions de l'article 457 de la loi précitée leur sont applicables. Les peines prévues par l'article 439 de la même loi sont applicables au président et aux membres des conseils de fondations d'entreprise qui n'auront pas, chaque année, établi un bilan, un compte de résultat et une annexe. Les dispositions des articles 455 et 458 de la même loi leur sont également applicables.

Les fondations d'entreprise dont les ressources dépassent un seuil défini par voie réglementaire sont tenues d'établir une situation de l'actif réalisable et disponible et du passif exigible, un compte de résultat prévisionnel, un tableau de financement et un plan de financement. Ces documents sont analysés dans des rapports écrits sur l'évolution de la fondation d'entreprise, établis par le conseil d'administration; ils sont communiqués au commissaire aux comptes. En cas de non-observation des dispositions du présent alinéa ou si les rapports qui lui sont adressés appellent des observations de sa part, le commissaire aux comptes le signale au conseil d'administration par un rapport écrit.

Le commissaire aux comptes peut appeler l'attention du président ou des membres du conseil de la fondation d'entreprise sur tout fait de nature à compromettre la continuité de l'activité qu'il a relevé au cours de sa mission; il peut demander au conseil d'administration d'en délibérer; il assiste à la réunion; en cas d'inobservation de ces dispositions ou si, en dépit des décisions prises, il constate que la continuité de l'activité reste compromise, le commissaire aux comptes établit un rapport spécial qu'il adresse à l'autorité administrative.

Art. 19-10. - L'autorité administrative s'assure de la régularité du fonctionnement de la fondation d'entreprise; à cette fin, elle peut se faire communiquer tous documents et procéder à toutes investigations utiles.

La fondation d'entreprise adresse, chaque année, à l'autorité administrative un rapport d'activité auquel sont joints le rapport du commissaire aux comptes et les comptes annuels.

Art. 19-11. - Lorsque la fondation est dissoute, soit par l'arrivée du terme, soit à l'amiable par le retrait de l'ensemble des fondateurs, sous réserve qu'ils aient intégralement payé les sommes qu'ils se sont engagés à verser, un liquidateur est nommé par le conseil d'administration. Si le conseil n'a pu procéder à cette nomination ou si la dissolution résulte du retrait de l'autorisation, le liquidateur est désigné par l'autorité judiciaire.

La nomination du liquidateur est publiée au Journal officiel.

Art. 19-12. - En cas de dissolution d'une fondation d'entreprise, les ressources non employées et la dotation sont attribuées par le liquidateur à un ou plusieurs établissements publics ou reconnus d'utilité publique dont l'activité est analogue à celle de la fondation d'entreprise dissoute.

Art. 19-13. - Un décret en Conseil d'Etat fixe les modalités d'application des articles 18 à 19-12 de la présente loi.

8.3. Law on NPO

There is no specific law on NPOs in France.

8.4. Law on NGO

There is no specific law defining NGOs in France, but there is a general definition[351].

L'expression d'organisation non gouvernementale (ONG) est apparue en 1946 dans le vocabulaire international, à l'article 71 de la Charte des Nations Unies, avant d'être progressivement

[351] http://membres.lycos.fr/webhumanitaire/ONG.htm

précisée par la jurisprudence et la pratique des relations internationales.

Les organisations non gouvernementales appelées aussi, selon une terminologie récemment apparue, organisations ou associations de solidarité internationale (OSI ou ASI), ne disposent pas dans notre pays de définition juridique ni d'une reconnaissance spécifique de l'État.

Elles sont régies, en tant qu'associations, par la loi du 1er juillet 1901, et sont donc considérées comme organisations la vie associative privée au sens large, développant sans but lucratif une activité internationale dont tout ou partie est consacrée à l'expression de solidarités avec les populations défavorisées. Ainsi, les ONG se caractérisent essentiellement par l'origine privée de leur constitution, la nature bénévole de leurs activités et le caractère international de leurs objectifs.

Outre les associations proprement dites, on compte parmi les ONG des congrégations religieuses, des mutuelles et des coopératives, tous organismes liés à la notion d 'économie sociale. Les buts qu'ils poursuivent peuvent être d'ordre économique, social, éducatif, culturel, religieux, etc.

Il n'existe pas de recensement exhaustif des associations, mais le Répertoire des associations de solidarité internationale 1997-1998, élaboré par la Commisssion coopération développement, dénombre environ 600 organisations de statut associatif et de dimension nationale engagées par leur action en France ou hors frontières dans la solidarité internationale. Elles peuvent être classées selon leurs modes d'intervention et leurs domaines d'activité.

8.5. Law on other legal forms

There are no relevant specific laws on other legal forms in France.

8.6. Other laws

8.6.1. General Tax Law

The general tax law "Code general des impots"[352].

Article 238 bis

Ouvrent droit à une réduction d'impôt égale à 60 % de leur montant les versements, pris dans la limite de 5 pour mille du chiffre d'affaires, effectués par les entreprises assujetties à l'impôt sur le revenu ou à l'impôt sur les sociétés au profit :

a) D'oeuvres ou d'organismes d'intérêt général ayant un caract ère philantropique, éducatif, scientifique, social, humanitaire, sportif, familial, culturel ou concourant à la mise en valeur du patrimoine artistique, à la défense de l'environnement naturel où à la diffusion de la culture, de la langue et des connaissances scientifiques françaises, notamment quand ces versements sont faits au bénéfice d'une fondation d'entreprise, même si cette dernière porte le nom de l'entreprise fondatrice. Ces dispositions s'appliquent même si le nom de l'entreprise versante est associé aux opérations réalisées par ces organismes ;

b) De fondations ou associations reconnues d'utilité publique ou des musées de France et répondant aux conditions fixées au a, ainsi que d'associations cultuelles ou de bienfaisance qui sont autorisées à recevoir des dons et legs et des établissements publics des cultes reconnus d'Alsace-Moselle. La condition relative à la reconnaissance d'utilité publique est réputée remplie par les associations régies par la loi locale maintenue en vigueur dans les départements de la Moselle, du Bas-Rhin et du Haut-Rhin lorsque la mission de ces associations est reconnue d'utilité publique. Un décret en Conseil d'Etat fixe les conditions de cette reconnaissance et les modalités de procédure permettant de l'accorder ;

c) Des établissements d'enseignement supérieur ou d'enseignement artistique, publics ou privés, à but non lucratif, agréés par le ministre chargé du budget ainsi que par le ministre chargé de l'enseignement supérieur ou par le ministre chargé de la culture ;

d) Des sociétés ou organismes publics ou privés agréés à cet effet par le ministre chargé du budget en vertu de l'article 4 de l'ordonnance nº 58-882 du 25 septembre 1958 relative à la fiscalité en matière de recherche scientifique et technique ;

[352] http://www.legifrance.gouv.fr/WAspad/VisuArticleCode?commun=CGIMPO&code=&h0=CGIMPO00.rcv&h1=1&h3=39, 9 December 2004.

e) D'organismes publics ou privés dont la gestion est désintéressée et qui ont pour activité principale la présentation au public d'oeuvres dramatiques, lyriques, musicales, chorégraphiques, cinématographiques et de cirque, à la condition que les versements soient affectés à cette activité. Cette disposition ne s'applique pas aux organismes qui présentent des oeuvres à caractère pornographique ou incitant à la violence.

Les organismes mentionnés au b peuvent, lorsque leurs statuts ont été approuvés à ce titre par décret en Conseil d'Etat, recevoir des versements pour le compte d'oeuvres ou d'organismes mentionnés au a.

Lorsque la limite fixée au premier aliéna est dépassée au cours d'un exercice, l'excédent de versement peut donner lieu à réduction d'impôt au titre des cinq exercices suivants, après prise en compte des versements effectués au titre de chacun de ces exercices, sans qu'il puisse en résulter un dépassement du plafond défini au premier alinéa.

La limite de 5 pour mille du chiffre d'affaires s'applique à l'ensemble des versements effectués au titre du présent article.

Les versements ne sont pas déductibles pour la détermination du bénéfice imposable.

2. (abrogé).

3. (abrogé).

4. Ouvrent également droit, et dans les mêmes conditions, à la réduction d'impôt prévue au 1 les dons versés aux organismes agréés dans les conditions prévues à l'article 1649 nonies et dont l'objet exclusif est de verser des aides financières permettant la réalisation d'investissements tels que définis au c de l'article 2 du règlement (CE) nº 70/2001 de la Commission, du 12 janvier 2001, concernant l'application des articles 87 et 88 du traité CE aux aides d'Etat en faveur des petites et moyennes entreprises ou de fournir des prestations d'accompagnement à des petites et moyennes entreprises telles qu'elles sont définies à l'annexe I à ce règlement.

L'agrément est délivré à l'organisme s'il s'engage à respecter continûment l'ensemble des conditions suivantes :

1º La gestion de l'organisme est désintéressée ;

2º Ses aides et prestations ne sont pas rémunérées et sont utilisées dans l'intérêt direct des entreprises bénéficiaires ;

3º Les aides accordées entrent dans le champ d'application du règlement (CE) nº 70/2001 précité ou sont spécifiquement autorisées par la Commission ;

4º Le montant versé chaque année à une entreprise ne devra pas excéder 20 % des ressources annuelles de l'organisme ;

5º Les aides ne peuvent bénéficier aux entreprises exerçant à titre principal une activité visée à l'article 35.

L'agrément accordé aux organismes qui le sollicitent pour la première fois porte sur une période comprise entre la date de sa notification et le 31 décembre de la deuxième année qui suit cette date. En cas de demande de renouvellement d'agrément, ce dernier, s'il est accordé, l'est pour une période de cinq ans.

Un décret fixe les modalités d'application du présent article, notamment les dispositions relatives aux statuts des organismes bénéficiaires des dons, les conditions de retrait de l'agrément et les informations relatives aux entreprises aidées que les organismes communiquent au ministre ayant délivré l'agrément

Art. 1038

Les conventions passées pour l'exécution de l'ordonnance nº 59-151 modifiée du 7 janvier 1959, relative à l'organisation des transports de voyageurs en Ile-de-France, sont enregistrées au droit fixe de 75 euros.

Article 1039

Sous réserve des dispositions de l'article 1020, la transmission effectuée, sous quelque forme que ce soit et dans un intérêt général ou de bonne administration, au profit d'un établissement reconnu d'utilité publique, de tout ou partie des biens appartenant à un organisme poursuivant une oeuvre d'intérêt public ne donne lieu à aucune perception au profit du Trésor.

Le bénéfice de cette disposition est subordonné à la double condition que les biens dont il s'agit restent affectés au même objet et que leur transmission intervienne dans un intérêt général ou de bonne administration. La réalisation de cette condition est constatée par le décret en conseil d'Etat ou l'arrêté préfectoral qui autorise le transfert des biens.

Article 1039 A

Sous réserve des dispositions de l'article 1020, les transferts effectués, au profit d'un comité professionnel de développement économique régi par la loi nº 78-654 du 22 juin 1978, de biens de toute nature appartenant à un organisme ayant un but similaire sont exonérés de tous droits de mutation ou d'apport.

Article 1040

I. Les acquisitions et échanges faits par l'Etat, les partages de biens entre lui et les particuliers, et tous autres actes faits à ce sujet sont exonérés du droit de timbre de dimension, des droits d'enregistrement et de la taxe de publicité foncière.
Cette disposition n'est pas applicable aux établissements publics de l'Etat, autres que les établissements publics scientifiques, d'enseignement, d'assistance et de bienfaisance (1).

II. Sauf lorsque la taxe de publicité foncière tient lieu des droits d'enregistrement en application de l'article 664, les formalités afférentes aux actes autres que ceux visés au I et dont les frais incomberaient légalement à l'Etat, sont exonérées de ladite taxe.

Voir les articles 169 et 170 de l'annexe IV.

8.6.2. Law on commerce

Law on commerce "Code de Commerce"[353]

Article L612-4

(Loi nº 2003-706 du 1 août 2003 art. 116, art. 121 Journal Officiel du 2 août 2003)

Toute association ayant reçu annuellement de l'Etat ou de ses établissements publics ou des collectivités locales une ou plusieurs subventions dont le montant global excède un montant fixé par décret doit établir chaque année un bilan, un compte de résultat et une annexe dont les modalités d'établissement sont précisées par décret.

Ces mêmes associations sont tenues de nommer au moins un commissaire aux comptes et un suppléant choisis sur la liste mentionnée à l'article L. 822-1 qui exercent leurs fonctions dans les conditions prévues par le livre II sous réserve des règles qui leur sont propres. Les dispositions de l'article L. 242-27 sont applicables.

Le commissaire aux comptes de ces mêmes associations peut attirer l'attention des dirigeants sur tout fait de nature à compromettre la continuité de l'activité qu'il a relevé au cours de sa mission.

Il peut inviter le président à faire délibérer l'organe collégial de l'association. Le commissaire aux comptes est convoqué à cette séance.

En cas d'inobservation de ces dispositions ou si, en dépit des décisions prises, il constate que la continuité des activités reste compromise, le commissaire aux comptes établit un rapport spécial. Il peut demander que ce rapport soit adressé aux membres de l'association ou qu'il soit présenté à la prochaine assemblée.

8.6.3. Decree Law concerning the Law of 1 July 1901

Decrere Law of 16 July 1901 concerning the Law of 1 July 1901 "Décret du 16 août 1901, portant règlement d'administration publique pour l'exécution de la loi du 1er juillet 1901 relative au contrat d'association".

11. Les statuts contiennent:

1° L'indication du titre de l'association, de son objet, de sa durée et de son siège social;

2° Les conditions d'admission et de radiation de ses membres;

3° Les règles d'organisation et de fonctionnement de l'association et de ses établissements, ainsi que la détermination des pouvoirs conférés aux membres chargés de l'administration ou de la direction, les conditions de modification des statuts et de la dissolution de l'association;

4° L'engagement de faire connaître dans les trois mois à la prefecture ou à la sous-préfecture tous les changements survenus dans l'adminitration ou la direction et de présenter sans déplacement les registres et pièces de comptabilité, sur toute réquisition du préfet, à lui-même ou à son délégué;

5° Les règles suivant lesquelles les biens seront dévolus en cas de dissolution volontaire, statutaire, prononcée en justice ou par décret;

6° Le prix maximum des rétributions qui seront perçues à un titre quelconque dans les établissements de l'association où la gratuité n'est pas complète.

[353] http://lesrapports.ladocumentationfrancaise.fr/BRP/014000054/0000.pdf p. 82, 13 December 2004.

Law 91-772 of 7 August 1991

Law of 7 August 1991 "Loi 91-772 du 07 Août 1991 - Loi relative au congé de représentation en faveur des associations et des mutuelles et au contrôle des comptes des organismes faisant appel à la générosité publique"[354].

L'Assemblée nationale et le Sénat ont délibéré, L'Assemblée nationale a adopté,

Vu la décision du Conseil constitutionnel n° 91-299 DC en date du 7 août 1991,

Le Président de la République promulgue la loi dont la teneur suit :

Article 3

Les organismes qui, afin de soutenir une cause scientifique, sociale, familiale, humanitaire, philanthropique, éducative, sportive, culturelle ou concourant à la défense de l'environnement, souhaitent faire appel à la générosité publique dans le cadre d'une campagne menée à l'échelon national soit sur la voie publique, soit par l'utilisation de moyens de communication, sont tenus d'en faire la déclaration préalable auprès de la préfecture du département de leur siège social.

Cette déclaration précise les objectifs poursuivis par l'appel à la générosité publique.

Les organismes effectuant plusieurs campagnes successives peuvent procéder à une déclaration annuelle.

Les moyens mentionnés ci-dessus sont les supports de communication audiovisuelle, la presse écrite, les modes d'affichage auxquels s'appliquent les dispositions de l'article 2 de la loi n° 79-1150 du 29 décembre 1979 relative à la publicité, aux enseignes et préenseignes ainsi que la voie postale et les procédés de télécommunications.

Article 3 bis

Créé par Loi 96-452 28 Mai 1996 art 43 JORF 29 mai 1996.

Lorsque la campagne est menée conjointement par plusieurs organismes visés à l'article 3, ou, pour leur compte, par un organisme unique, la déclaration préalable mentionnée au même article précise les conditions de répartition entre eux des ressources collectées.

Le cas échéant, la déclaration fixe les critères d'attribution de la part des ressources collectées qui n'est pas reversée aux organismes mentionnés à l'alinéa précédent et désigne l'instance chargée de répartir entre les organismes non organisateurs les fonds affectés à la recherche ou à des actions sociales.

Les informations mentionnées aux alinéas ci-dessus sont portées à la connaissance des personnes sollicitées par les organismes organisateurs de la campagne.

Article 4

Les organismes visés à l'article 3 de la présente loi établissent un compte d'emploi annuel des ressources collectées auprès du public, qui précise notamment l'affectation des dons par type de dépenses.

Ce compte d'emploi est déposé au siège social de l'organisme; il peut être consulté par tout adhérent ou donateur de cet organisme qui en fait la demande.

Les modalités de présentation de ce compte d'emploi sont fixées par arrêté du Premier ministre pris après avis d'une commission consultative composée des représentants des ministères concernés, de la Cour des comptes et des associations.

Article 6

Abrogé par Loi 94-1040 2 Décembre 1994 art 8 23° JORF 6 décembre 1994.

Article 7

Le décret en Conseil d'Etat prévu à l'article 5 ci-dessus précise les conditions d'application de la présente loi. Il fixe notamment les modalités de la déclaration prévue à l'article 3, celles du contrôle exercé par la Cour des comptes et celles de la publicité des observations formulées à l'occasion de ce contrôle.

Article 8

[354] http://membres.lycos.fr/mgelbard/L772.html, 25 May 2005.

Le Gouvernement déposera, avant le 31 décembre 1992, un rapport au Parlement afin de permettre à la représentation nationale d'évaluer pour les entreprises les conséquences de l'institution du congé de représentation.

8.6.4. Charter of Deontology

The Charter of Deontology of the "Comité de la Charte de déontologie des organisations sociales et humanitaires faisant appel à la générosité du public" (CC): "Charte de déontologie des organisations sociales et humanitaires faisant appel à la générosité du public"[355]

Les associations et fondations accomplissant des missions d'intérêt général à caractère social et humanitaire au plan tant national qu'international sont des acteurs majeurs de la société et se trouvent, de ce fait, sous le regard du public qui :

- apprécie généralement leur action, dont la légitimité propre aux côtés de celles du marché et des pouvoirs publics, répond à des besoins non satisfaits;

- apporte volontairement son soutien -financier, matériel, en temps - à certaines d'entre elles pour qu'elles réalisent au mieux les missions qu'elles se sont assignées.

- souhaite être informé sur leur fonctionnement et la bonne utilisation de leurs ressources.

Dès 1989, des associations et fondations sociales et humanitaires faisant appel à la générosité du public, conscientes de leur devoir d'information et souhaitant que les donateurs puissent donner en confiance, ont :

- défini des règles fondamentales de déontologie, reposant sur des principes de transparence, rassemblées dans la charte de déontologie des organisations sociales et humanitaires faisant appel à la générosité du public (ci-après nommée la charte),

- créé un comité chargé de contrôler le respect de cette charte par ses membres (ci-après nommé Comité de la charte de déontologie).

Les organisations signataires de la présente charte et agréées par le Comité de la charte de déontologie comme membres et ci-après désignées sous l'expression « organisations membres », affirment leur attachement à la notion de transparence et s'engagent à respecter des principes relatifs:

- au fonctionnement statutaire et à la gestion désintéressée;

- à la rigueur de la gestion;

- à la qualité de la communication et des actions de collectes de fonds;

- à la transparence financière;

et sont convenues des modalités d'application de ces principes et d'utilisation du logotype du Comité de la charte de déontologie.

1. Fonctionnement des instances statutaires

Fonctionnement des instances statutaires

Les organisations membres s'engagent à prévoir dans leurs statuts, éventuellement complétés par le règlement intérieur ou tout autre document en tenant lieu:

a. dans toutes les organisations (associations et fondations…),

- un organe collégial (généralement nommé Conseil d'administration) composé au moins de trois membres dûment mandatés et connus, chargé de la diriger et se réunissant au moins deux fois par an;

- s'il existe des comités impliqués dans la mise en oeuvre des missions sociales, des dispositions spécifiques, qui doivent en préciser le rôle, la composition et les modalités de fonctionnement.

b. dans les seules associations, une assemblée générale, organe souverain regroupant ses membres, qui doit se réunir au moins une fois par an.

Gestion désintéressée

Les organisations membres s'engagent à respecter les principes suivants :

- non rémunération des fonctions d'administrateur;

- non distribution directe ou indirecte de bénéfices;

- non attribution de l'actif aux membres de l'organisme et leurs ayants droit;

[355] http://www.comitecharte.org/Charte/TACpdf/charte.pdf, 13 December 2004

- interdiction des conventions entre elles-mêmes et leurs dirigeants ou personnes interposées, susceptibles de remettre en cause le caractère désintéressé de leur gestion.

2. Rigueur de lagestion

Principes généraux Les organisations membres s'engagent à utiliser des méthodes de gestion visant à optimiser l'emploi des fonds dont elles disposent. Dans cette perspective :

- elles mettent en place des procédures et des contrôles permettant d'assurer la pertinence et l'efficacité de leur gestion de l'ensemble de leurs structures.

- elles sélectionnent les prestataires de services ou fournisseurs dans les plus grandes conditions d'objectivité et proscrivent tout lien avec des prestataires de services ou fournisseurs susceptible de remettre en cause le caractère désintéressé de leur gestion;

- elles s'interdisent toute rémunération de prestataires assise sur les produits de la collecte;

- elles affectent les produits provenant de la générosité du public conformément à la volonté du donateur;

- elles vérifient la bonne utilisation des fonds distribués à d'autres organismes a minima par la signature d'un accord écrit entre elles et le bénéficiaire.

Activités commerciales:

Si une organisation membre met en oeuvre des activités à caractère commercial (directement ou indirectement par le biais de filiales de quelque nature que ce soit), ces activités doivent rester cohérentes avec ses objectifs statutaires et être portées à la connaissance des donateurs.

Recours à des filiales:

Le recours à des filiales ou organismes assimilables (commerciaux ou non) doit être décidé par les instances statutaires qui doivent être tenues régulièrement informées de leur évolution et en assurer un contrôle effectif. La rigueur de la gestion s'applique également aux filiales. L'annexe aux comptes annuels mentionne les relations entre l'organisation membre et ses filiales.

Gestion financière:

Les organisations membres ne doivent pas rechercher de manière systématique la réalisation d'excédents importants. Toutefois elles doivent s'efforcer de constituer des réserves leur permettant de respecter leurs engagements. L'organe collégial de l'organisation membre est responsable des placements financiers, des emprunts, garanties et cautions, et doit être régulièrement informé de leurs modalités de gestion et des risques encourus.

3. Qualité de la communication et des actions de collecte de fonds

Principes de communication Pour répondre à l'objectif de la charte de permettre aux donateurs de « donner en confiance », les organisations membres s'engagent à donner au public et particulièrement à leurs donateurs et adhérents, une information fiable, loyale, précise et objective. Celle-ci s'attachera notamment à faire connaître les orientations générales de l'organisation et ses engagements, ses choix d'action, l'origine et l'utilisation des fonds collectés, le nom de ses dirigeants et son organisation.

Les organisations membres s'engagent en outre à ce que toute communication - quels qu'en soient la forme et l'objet - soit réalisée sous la responsabilité de leurs instances statutaires et respecte les dispositions suivantes :

- indiquer clairement et complètement l'émetteur notamment de façon à éviter tout risque quelconque de confusion avec tout autre émetteur;

- s'inscrire dans le cadre de son objet social défini dans ses statuts;

- ne comporter aucune inexactitude, ambiguïté, exagération, oublide nature à tromper le public;

- n'utiliser que des informations précises, vérifiées et représentatives de la réalité;

- respecter la dignité des personnes présentées.

Collecte de fonds:

Les organisations membres s'engagent à ne mettre en oeuvre que des modes de collecte de fonds respectueux des donateurs et des personnes qui y apportent leur concours.

Elles s'engagent à respecter les dispositions législatives et réglementaires relatives à la

protection des données individuelles et aux appels à la générosité du public.

Référence à l'appartenance au Comité de la charte de déontologie:

La référence à l'appartenance au Comité de la charte de déontologie doit se faire selon des termes qui ne laissent aucun doute sur la nature des engagements souscrits. L'expression de cette appartenance et l'utilisation du logotype «donner en confiance» doivent être conformes au règlement intérieur du Comité de la charte de déontologie.

4. Transparence financière

Les organisations membres s'engagent:

a. avant la tenue de l'assemblée générale:

- à établir:

  des comptes et des documents de synthèse annuels (compte de résultat, bilan, annexe) selon les règlements comptables en vigueur.

  un compte d'emploi annuel des ressources conforme au modèle du Comité de la charte de déontologie accompagné des annexes prévues.

- à demander au commissaire aux comptes:

  de certifier les comptes annuels,

  d'attester la sincérité et la concordance avec les documents comptables, des informations présentées dans le compte d'emploi annuel des ressources et dans ses annexes.

  d'établir un rapport particulier sur les conventions susceptibles de remettre en cause la gestion désintéressée.

- à mettre à disposition de tous les adhérents les documents évoqués ci-dessus (comptes annuels, documents de synthèse, compte d'emploi des ressources et annexes au compte d'emploi des ressources) ainsi que le rapport financier. A défaut de communication individuelle, ces documents seront adressés gratuitement à tout adhérent en faisant la demande et consultables au siège de l'organisation dans les conditions les plus larges possibles avant l'assemblée générale devant statuer sur les comptes.

b. Et après l'assemblée générale:

- à diffuser à tous les donateurs, le compte d'emploi annuel des ressources et le bilan comparés à ceux de l'année précédente dans l'organe périodique de l'organisation ou par tout autre moyen approprié. Afin d'en faciliter la compréhension, ces documents seront accompagnés de commentaires clairs et synthétiques.

- à mettre à disposition de toute personne en faisant la demande et par tout moyen approprié l'ensemble de ces documents (comptes annuels et documents de synthèse, compte d'emploi annuel des ressources et annexes au compte d'emploi annuel des ressources).

5. Application de lacharte

Par la signature de la présente charte et l'adhésion au Comité de la charte de déontologie, les organisations membres prennent l'engagement de respecter l'ensemble du dispositif de déontologie et de contrôle défini par le Comité de la charte de déontologie. Les modalités d'application de la présente charte sont définies dans des textes d'application qui s'imposent aux membres au même titre que la charte. Le Comité de la charte de déontologie contrôle le respect des engagements pris ; ce contrôle est effectué par les mandataires du Comité de la charte de déontologie qui mettent en oeuvre, conformément aux statuts et au règlement intérieur, les investigations qu'ils estiment nécessaires et ont accès à tous les documents qu'ils jugent utiles à l'accomplissement de leur mission. Le Comité de la charte de déontologie peut mettre fin à l'appartenance de l'un de ses membres après avoir constaté que les engagements pris par lui n'ont pas été tenus.

9. Germany

9.1. Law on Associations

9.1.1. Associations Act

Associations are goverened by the Associations Act "Vereinsgesetz (VereinsG)"[356].

§ 1 Vereinsfreiheit

(1) Die Bildung von Vereinen ist frei (Vereinsfreiheit).

(2) Gegen Vereine, die die Vereinsfreiheit mißbrauchen, kann zur Wahrung der öffentlichen Sicherheit oder Ordnung nur nach Maßgabe dieses Gesetzes eingeschritten werden.

[356] http://bundesrecht.juris.de/bundesrecht/vereinsg/, 15 November 2004.

§ 2 Begriff des Vereins

(1) Verein im Sinne dieses Gesetzes ist ohne Rücksicht auf die Rechtsform jede Vereinigung, zu der sich eine Mehrheit natürlicher oder juristischer Personen für längere Zeit zu einem gemeinsamen Zweck freiwillig zusammengeschlossen und einer organisierten Willensbildung unterworfen hat.

(2) Vereine im Sinne dieses Gesetzes sind nicht

1. politische Parteien im Sinne des Artikels 21 des Grundgesetzes,

2. Fraktionen des Deutschen Bundestages und der Parlamente der Länder.

§ 3 Verbot

(1) Ein Verein darf erst dann als verboten (Artikel 9 Abs. 2 des Grundgesetzes) behandelt werden, wenn durch Verfügung der Verbotsbehörde festgestellt ist, daß seine Zwecke oder seine Tätigkeit den Strafgesetzen zuwiderlaufen oder daß er sich gegen die verfassungsmäßige Ordnung oder den Gedanken der Völkerverständigung richtet; in der Verfügung ist die Auflösung des Vereins anzuordnen (Verbot). Mit dem Verbot ist in der Regel die Beschlagnahme und die Einziehung

1. des Vereinsvermögens

2. von Forderungen Dritter, soweit die Einziehung in § 12 Abs. 1 vorgesehen ist, und

3. von Sachen Dritter, soweit der Berechtigte durch die Überlassung der Sachen an den Verein dessen verfassungswidrige Bestrebungen vorsätzlichgefördert hat oder die Sachen zur Förderung dieser Bestrebungen bestimmt sind, zu verbinden.

(2) Verbotsbehörde ist

1. die obersten Landesbehörde oder die nach Landesrecht zuständige Behörde für Vereine und Teilvereine, deren erkennbare Organisation und Tätigkeit sich auf das Gebiet eines Landes beschränken;

2. der Bundesminister des Innern für Vereine und Teilvereine, deren Organisation oder Tätigkeit sich über das Gebiet eines Landes hinaus erstreckt.

Die oberste Landesbehörde oder die nach Landesrecht zuständige Behörde entscheidet im Benehmen mit dem Bundesminister des Innern, wenn sich das Verbot gegen den Teilverein eines Vereins richtet, für dessen Verbot nach Satz 1 Nr. 2 der Bundesminister des Innern zuständig ist. Der Bundesminister des Innern entscheidet im Benehmen mit Behörden, die nach Satz 1 Nr. 1 für das Verbot von Teilvereinen zuständig gewesen wären.

(3) Das Verbot erstreckt sich, wenn es nicht ausdrücklich beschränkt wird, auf alle Organisationen, die dem Verein derart eingegliedert sind, daß sie nach dem Gesamtbild der tatsächlichen Verhältnisse als Gliederung dieses Vereins erscheinen (Teilorganisationen). Auf nichtgebietliche Teilorganisationen mit eigener Rechtspersönlichkeit erstreckt sich das Verbot nur, wenn sie in der Verbotsverfügung ausdrücklich benannt sind.

(4) Das Verbot ist schriftlich oder elektronisch mit einer dauerhaft überprüfbaren Signatur nach § 37 Abs. 4 des Verwaltungsverfahrensgesetzes abzufassen, zu begründen und dem Verein, im Falle des Absatzes 3 Satz 2 auch den Teilorganisationen, zuzustellen. Der verfügende Teil des Verbots ist im Bundesanzeiger und danach im amtlichen Mitteilungsblatt des Landes bekanntzumachen, in dem der Verein oder, sofern sich das Verbot hierauf beschränkt, der Teilverein seinen Sitz hat; Verbote nach § 15 werden nur im Bundesanzeiger bekanntgemacht. Das Verbot wird mit der Zustellung, spätestens mit der Bekanntmachung im Bundesanzeiger, wirksam und vollziehbar; § 80 der Verwaltungsgerichtsordnung bleibt unberührt.

(5) Die Verbotsbehörde kann das Verbot auch auf Handlungen von Mitgliedern des Vereins stützen, wenn

1. ein Zusammenhang zur Tätigkeit im Verein oder zu seiner Zielsetzung besteht,

2. die Handlungen auf einer organisierten Willensbildung beruhen und

3. nach den Umständen anzunehmen ist, daß sie vom Verein geduldet werden

9.1.2. §§ 21 – 79 Civil Code

§§ 21 – 79 Civil Code "Bűrgerliches Gesetzbuch (BGB)"[357]

§ 21 Nichtwirtschaftlicher Verein

Ein Verein, dessen Zweck nicht auf einen wirtschaftlichen Geschäftsbetrieb gerichtet ist, erlangt Rechtsfähigkeit durch Eintragung in das Vereinsregister des zuständigen Amtsgerichts.

[357] http://bundesrecht.juris.de/bundesrecht/bgb/index.html, 15 November 2004.

§ 22 Wirtschaftlicher Verein

Ein Verein, dessen Zweck auf einen wirtschaftlichen Geschäftsbetrieb gerichtet ist, erlangt in Ermangelung besonderer /*reichs*/gesetzlicher Vorschriften Rechtsfähigkeit durch staatliche Verleihung. Die Verleihung steht dem Bundesstaate zu, in dessen Gebiet der Verein seinen Sitz hat.

§ 25 Verfassung

Die Verfassung eines rechtsfähigen Vereins wird, soweit sie nicht auf den nachfolgenden Vorschriften beruht, durch die Vereinssatzung bestimmt.

§ 26 Vorstand; Vertretung

(1) Der Verein muss einen Vorstand haben. Der Vorstand kann aus mehreren Personen bestehen.

(2) Der Vorstand vertritt den Verein gerichtlich und außergerichtlich; er hat die Stellung eines gesetzlichen Vertreters. Der Umfang seiner Vertretungsmacht kann durch die Satzung mit Wirkung gegen Dritte beschränkt werden.

§ 32 Mitgliederversammlung; Beschlussfassung

(1) Die Angelegenheiten des Vereins werden, soweit sie nicht von dem Vorstand oder einem anderen Vereinsorgan zu besorgen sind, durch Beschlussfassung in einer Versammlung der Mitglieder geordnet. Zur Gültigkeit des Beschlusses ist erforderlich, dass der Gegenstand bei der Berufung bezeichnet wird. Bei der Beschlussfassung entscheidet die Mehrheit der erschienenen Mitglieder.

(2) Auch ohne Versammlung der Mitglieder ist ein Beschluss gültig, wenn alle Mitglieder ihre Zustimmung zu dem Beschluss schriftlich erklären.

§ 55 Zuständigkeit fűr die Registereintragung

(1) Die Eintragung eines Vereins der in § 21 bezeichneten Art in das Vereinsregister hat bei dem Amtsgericht zu geschehen, in dessen Bezirk der Verein seinen Sitz hat.

(2) Die Landesjustizverwaltungen können die Vereinssachen einem Amtsgericht für die Bezirke mehrerer Amtsgerichte zuweisen.

§ 56 Mindestmitgliederzahl des Vereins

Die Eintragung soll nur erfolgen, wenn die Zahl der Mitglieder mindestens sieben beträgt.

§ 57 Mindestanforderungen an die Vereinssatzung

(1) Die Satzung muss den Zweck, den Namen und den Sitz des Vereins enthalten und ergeben, dass der Verein eingetragen werden soll.

(2) Der Name soll sich von den Namen der an demselben Ort oder in derselben Gemeinde bestehenden eingetragenen Vereine deutlich unterscheiden.

§ 58 Sollinhalt der Vereinssatzung

Die Satzung soll Bestimmungen enthalten:

1. über den Eintritt und Austritt der Mitglieder,

2. darüber, ob und welche Beiträge von den Mitgliedern zu leisten sind,

3. über die Bildung des Vorstandes,

4. über die Voraussetzungen, unter denen die Mitgliederversammlung zu berufen

ist, über die Form der Berufung und über die Beurkundung der Beschlüsse.

§ 59 Anmeldung zur Eintragung

(1) Der Vorstand hat den Verein zur Eintragung anzumelden.

(2) Der Anmeldung sind beizufügen:

1. die Satzung in Urschrift und Abschrift,

2. eine Abschrift der Urkunden über die Bestellung des Vorstands.

(3) Die Satzung soll von mindestens sieben Mitgliedern unterzeichnet sein und die Angabe des Tages der Errichtung enthalten

9.2. Law on Foundations

9.2.1. Federal Law §§ 80-88 Civil Code

Civil Code "Bűrgerliches Gesetzbuch (BGB)"[358]

§ 80 Entstehung

(1) Zur Entstehung einer rechtsfähigen Stiftung sind das Stiftungsgeschäft und die Anerkennung durch die zuständige Behörde des Landes erforderlich, in dem die Stiftung ihren Sitz haben soll.

(2) Die Stiftung ist als rechtsfähig anzuerkennen, wenn das Stiftungsgeschäft den Anforderungen des § 81 Abs. 1 genügt, die dauernde und nachhaltige Erfüllung des Stiftungszwecks gesichert erscheint und der Stiftungszweck das Gemeinwohl nicht gefährdet.

(3) Vorschriften der Landesgesetze über kirchliche Stiftungen bleiben unberührt. Das gilt entsprechend für Stiftungen, die nach den Landesgesetzen kirchlichen Stiftungen gleichgestellt sind.

§ 81 Stiftungsgeschäft

(1) Das Stiftungsgeschäft unter Lebenden bedarf der schriftlichen Form. Es muss die verbindliche Erklärung des Stifters enthalten, ein Vermögen zur Erfüllung eines von ihm vorgegebenen Zweckes zu widmen. Durch das Stiftungsgeschäft muss die Stiftung eine Satzung erhalten mit Regelungen über

- den Namen der Stiftung
- den Sitz der Stiftung,
- den Zweck der Stiftung,
- das Vermögen der Stiftung,
- die Bildung des Vorstands der Stiftung.

Genügt das Stiftungsgeschäft den Erfordernissen des Satzes 3 nicht und ist der Stifter verstorben, findet § 83 Satz 2 bis 4 entsprechende Anwendung.

(2) Bis zur Anerkennung der Stiftung als rechtsfähig ist der Stifter zum Widerruf des Stiftungsgeschäfts berechtigt. Ist die Anerkennung bei der zuständigen Behörde beantragt, so kann der Widerruf nur dieser gegenüber erklärt werden. Der Erbe des Stifters ist zum Widerruf nicht berechtigt, wenn der Stifter den Antrag bei der zuständigen Behörde gestellt oder im Falle der notariellen Beurkundung des Stiftungsgeschäfts den Notar bei oder nach der Beurkundung mit der Antragstellung betraut hat.

§ 82 Übertragungspflicht des Stifters

Wird die Stiftung als rechtsfähig anerkannt, so ist der Stifter verpflichtet, das in dem Stiftungsgeschäft zugesicherte Vermögen auf die Stiftung zu übertragen. Rechte, zu deren Übertragung der Abtretungsvertrag genügt, gehen mit der Anerkennung auf die Stiftung über, sofern nicht aus dem Stiftungsgeschäft sich ein anderer Wille des Stifters ergibt.

§ 83 Stiftung von Todes wegen

Besteht das Stiftungsgeschäft in einer Verfügung von Todes wegen, so hat das Nachlassgericht dies der zuständigen Behörde zur Anerkennung mitzuteilen, sofern sie nicht von dem Erben oder dem Testamentsvollstrecker beantragt wird. Genügt das Stiftungsgeschäft nicht den Erfordernissen des § 81 Abs. 1 Satz 3, wird der Stiftung durch die zuständige Behörde vor der Anerkennung eine Satzung gegeben oder eine unvollständige Satzung ergänzt; dabei soll der Wille des Stifters berücksichtigt werden. Als Sitz der Stiftung gilt, wenn nicht ein anderes bestimmt ist, der Ort, an welchem die Verwaltung geführt wird. Im Zweifel gilt der letzte Wohnsitz des Stifters im Inland als Sitz.

§ 84 Anerkennung nach Tod des Stifters

Wird die Stiftung erst nach dem Todes des Stifters als rechtsfähig anerkannt, so gilt sie für die Zuwendungen des Stifters als schon vor dessen Tod entstanden.

§ 85 Stiftungsverfassung

Die Verfassung einer Stiftung wird, soweit sie nicht auf Bundes- oder Landesgesetz beruht, durch das Stiftungsgeschäft bestimmt.

§ 86 Anwendung des Vereinsrechts

Die Vorschriften der §§ 23 und 26, des § 27 Abs. 3 und der §§ 28 bis 31, 42 finden auf Stiftungen

[358] http://bundesrecht.juris.de/bundesrecht/bgb/index.html, 12 November 2004.

entsprechende Anwendung, die Vorschriften des § 27 Abs. 3 und des § 28 Abs. 1 jedoch nur insoweit, als sich nicht aus der Verfassung, insbesondere daraus, dass die Verwaltung der Stiftung von einer öffentlichen Behörde geführt wird, ein anderes ergibt. Die Vorschriften des § 28 Abs. 2 und des § 29 finden auf Stiftungen, deren Verwaltung von einer öffentlichen Behörde geführt wird, keine Anwendung.

§ 87 Zweckänderung; Aufhebung

1) Ist die Erfüllung des Stiftungszwecks unmöglich geworden oder gefährdet sie das Gemeinwohl, so kann die zuständige Behörde der Stiftung eine andere Zweckbestimmung geben oder sie aufheben.

(2) Bei der Umwandlung des Zweckes soll der Wille des Stifters berücksichtigt werden, insbesondere soll dafür gesorgt werden, dass die Erträge des Stiftungsvermögens dem Personenkreis, dem sie zustatten kommen sollten, im Sinne des Stifters erhalten bleiben. Die Behörde kann die Verfassung der Stiftung ändern, soweit die Umwandlung des Zweckes es erfordert.

(3) Vor der Umwandlung des Zweckes und der Änderung der Verfassung soll der Vorstand der Stiftung gehört werden.

§ 88 Vermögensanfall

Mit dem Erlöschen der Stiftung fällt das Vermögen an die in der Verfassung bestimmten Personen. Fehlt es an einer Bestimmung der Anfallberechtigten, so fällt das Vermögen an den Fiskus des Landes, in dem die Stiftung ihren Sitz hatte, oder an einen anderen nach dem Recht dieses Landes bestimmten Anfallberechtigten. Die Vorschriften der §§ 46 bis 53 finden entsprechende Anwendung.

9.2.2. Foundations Act of Bavaria

Foundations Act of Bavaria Bayerisches Stiftungsgesetz (BayStG)[359]

1. Titel

Entstehung der Stiftungen, Stiftungsverzeichnis

Art. 3

Eine Stiftung des bürgerlichen Rechts entsteht durch das Stiftungsgeschäft und die Genehmigung auf Grund der §§ 80 bis 84 des Bürgerlichen Gesetzbuchs und der Art. 5 und 6 dieses Gesetzes.

Art. 4

Eine Stiftung des öffentlichen Rechts entsteht durch den Stiftungsakt und die Genehmigung in entsprechender Anwendung der §§ 80 bis 84 des Bürgerlichen Gesetzbuchs und auf Grund der Art. 5 und 6 dieses Gesetzes. Die Genehmigung entfällt, wenn eine Stiftung durch Gesetz errichtet wird oder der Freistaat Bayern Stifter oder Mitstifter ist.

Art. 5

Es besteht vorbehaltlich des Satzes 2 ein Rechtsanspruch auf Erteilung der Genehmigung.

Die Genehmigung ist zu versagen, wenn

1. die Stiftung einen rechtswidrigen oder das Gemeinwohl gefährdenden Zweck verfolgen soll,

2. die nachhaltige Erfüllung des Stiftungszwecks aus den Erträgen des Stiftungsvermögens nicht gesichert erscheint oder

3. eine sonstige auf Rechtsvorschriften beruhende Voraussetzung für die Errichtung einer Stiftung nicht erfüllt ist.

Art. 6

Die zur Entstehung einer Stiftung erforderliche Genehmigung erteilt die Regierung, in deren Bezirk die Stiftung ihren Sitz haben soll.

Art. 7

Hat eine Stiftung die Rechtsfähigkeit erlangt, ist ihre Entstehung von der

Genehmigungsbehörde im Bayerischen Staatsanzeiger bekannt zu machen.

Die Bekanntmachung umfasst folgende Angaben:

- Name der Stiftung,
- Rechtsstellung und Art,
- Sitz,

[359] http://www.stmi.bayern.de/imperia/md/content/stmi/service/gesetzeundvorschriften/baystg.pdf, 15 November 2004.

- Zweck,
- Stiftungsorgane,
- gesetzliche Vertretung,
- Name des Stifters,
- Zeitpunkt der Entstehung,
- Anschrift der Stiftungsverwaltung.

Auf Antrag des Stifters ist auf die Angabe seines Namens zu verzichten.

Art. 8

(1) Das Landesamt für Statistik und Datenverarbeitung führt ein allgemein zugängliches Verzeichnis der rechtsfähigen Stiftungen in Bayern mit Ausnahme der kirchlichen Stiftungen (Stiftungsverzeichnis).

(2) In das Stiftungsverzeichnis ist jede Stiftung mit den Angaben nach Art. 7 Satz 2 in Verbindung mit Satz 3 aufzunehmen. Änderungen zu diesen Angaben haben die Stiftungen der Genehmigungsbehörde unverzüglich mitzuteilen.

(3) Die Genehmigungsbehörden übermitteln dem Landesamt für Statistik und

Datenverarbeitung alle Angaben, die für die Führung des Stiftungsverzeichnisses

erforderlich sind.

2. Titel

Satzung der Stiftungen

Art. 9

(1) Jede Stiftung muss eine Satzung haben. Die Satzung wird, soweit sie nicht auf

Gesetz beruht, durch den Stiftungsakt oder das Stiftungsgeschäft bestimmt.

(2) Die Satzung hat Bestimmungen über Name, Rechtsstellung und Art, Sitz, Zweck, Vermögen und Organe der Stiftung sowie über die Verwendung des Stiftungsertrags zu enthalten. Bei Stiftungen des öffentlichen Rechts mit Dienstherrnfähigkeit ist ferner die Zuständigkeit für die Ernennung und Entlassung von Beamten festzulegen. Die Satzung kann bei der Genehmigung der Stiftung von der Genehmigungsbehörde ergänzt werden; zu Lebzeiten des Stifters jedoch nur mit seiner Zustimmung.

(3) Die Änderung der Stiftungssatzung bedarf der Genehmigung durch die Regierung. Art. 4 Satz 2 gilt entsprechend.

Art. 10

(1) Für die Stiftungen des bürgerlichen Rechts gilt § 86 des Bürgerlichen Gesetzbuchs.

(2) Auf die Stiftungen des öffentlichen Rechts finden die Vorschriften der §§ 26, 27

Abs. 3, § 28 Abs. 1 und § 30 des Bürgerlichen Gesetzbuchs entsprechende Anwendung, die Vorschriften des § 27 Abs. 3 und des § 28 Abs. 1 jedoch nur insoweit, als sich nicht aus der Satzung ein anderes ergibt. 2Außerdem gilt für sie § 89 des Bürgerlichen Gesetzbuchs.

9.3. Law on NPO

There is no specific law on NPOs in Germany.

9.4. Law on NGO

There is no specific law defining NGOs in Germany but there is a definition by the Ministry of Economic Collaboration[360].

Nichtregierungsorganisationen (NROs, auf Englisch non-governmental organisations, NGOs) sind prinzipiell alle Verbände oder Gruppen, die nicht von Regierungen oder staatlichen Stellen abhängig sind und gemeinsame Interessen vertreten - von Gewerkschaften über Kirchen bis zum Sportverein. Im allgemeinen Sprachgebrauch hat sich der Begriff NRO jedoch besonders für Organisationen, Vereine und Gruppen durchgesetzt, die sich gesellschaftspolitisch engagieren. Einige wichtige und typische Betätigungsfelder von NROs sind Entwicklungspolitik, Umweltpolitik und Menschenrechtspolitik.

[360] http://www.bmz.de/de/service/glossar/nichtregierungsorganisation.html, 15 November 2004.

9.5. Law on other legal forms

9.5.1. Civil Society

There is no specific law defining Civil Society in Germany but there is a definition by the Ministry of Economic Collaboration[361].

Ein ursprünglich vom italienischen Theoretiker Antonio Gramsci (1891 - 1937) entwickelter Begriff. Er verstand darunter die Gesamtheit aller nichtstaatlichen Organisationen, die auf den "Alltagsverstand und die öffentliche Meinung" Einfluss haben.

Heute umschreibt der Begriff die Gesamtheit des Engagements der Bürger eines Landes jenseits von staatlichen Entscheidungsprozessen. Dazu gehören alle Aktivitäten, die nicht profitorientiert und nicht abhängig von parteipolitischen Interessen sind. Die Institutionen der Zivilgesellschaft sind demokratisch strukturiert.

Verschiedene Politikwissenschaftler beschreiben die Zivilgesellschaft als Komponente, die neben dem Staat und den Kräften des Marktes notwendig ist, um eine ideale pluralistische Gesellschaft von engagierten Bürgern zu schaffen.

9.6. Other laws

9.6.1. Federal Fiscal Code

The Federal Fiscal Code "Abgabenordnung (AO)"[362]

§ 51 – Allgemeines

Gewährt das Gesetz eine Steuervergünstigung, weil eine Körperschaft ausschließlich und unmittelbar gemeinnützige, mildtätige oder kirchliche Zwecke (steuerbegünstigte Zwecke) verfolgt, so gelten die folgenden Vorschriften. Unter Körperschaften sind die Körperschaften, Personenvereinigungen und Vermögensmassen im Sinne des Körperschaftsteuergesetzes zu verstehen. Funktionale Untergliederungen (Abteilungen) von Körperschaften gelten nicht als selbständige Steuersubjekte.

§ 52 Gemeinnützige Zwecke

1) Eine Körperschaft verfolgt gemeinnützige Zwecke, wenn ihre Tätigkeit darauf gerichtet ist, die Allgemeinheit auf materiellem, geistigem oder sittlichem Gebiet selbstlos zu fördern. Eine Förderung der Allgemeinheit ist nicht gegeben, wenn der Kreis der Personen, dem die Förderung zugute kommt, fest abgeschlossen ist, zum Beispiel Zugehörigkeit zu einer Familie oder zur Belegschaft eines Unternehmens, oder infolge seiner Abgrenzung, insbesondere nach räumlichen oder beruflichen Merkmalen, dauernd nur klein sein kann. Eine Förderung der Allgemeinheit liegt nicht allein deswegen vor, weil eine Körperschaft ihre Mittel einer Körperschaft des öffentlichen Rechts zuführt.

(2) Unter den Voraussetzungen des Absatzes 1 sind als Förderung der Allgemeinheit anzuerkennen insbesondere:

1. die Förderung von Wissenschaft und Forschung, Bildung und Erziehung, Kunst und Kultur, der Religion, der Völkerverständigung, der Entwicklungshilfe, des Umwelt-, Landschafts- und Denkmalschutzes, des Heimatgedankens,

2. die Förderung der Jugendhilfe, der Altenhilfe, des öffentlichen Gesundheitswesens, des Wohlfahrtswesens und des Sports. Schach gilt als Sport,

3. die allgemeine Förderung des demokratischen Staatswesens im Geltungsbereich dieses Gesetzes; hierzu gehören nicht Bestrebungen, die nur bestimmte Einzelinteressen staatsbürgerlicher Art verfolgen oder die auf den kommunalpolitischen Bereich beschränkt sind,

4. die Förderung der Tierzucht, der Pflanzenzucht, der Kleingärtnerei, des traditionellen Brauchtums einschließlich des Karnevals, der Fastnacht und des Faschings, der Soldaten- und Reservistenbetreuung, des Amateurfunkens, des Modellflugs und des Hundesports.

§ 53 Mildtätige Zwecke

Eine Körperschaft verfolgt mildtätige Zwecke, wenn ihre Tätigkeit darauf gerichtet ist, Personen selbstlos zu unterstützen,

1.die infolge ihres körperlichen, geistigen oder seelischen Zustandes auf die Hilfe anderer angewiesen sind oder

2. deren Bezüge nicht höher sind als das Vierfache des Regelsatzes der Sozialhilfe im Sinne des § 28 des Zwölften Buches Sozialgesetzbuch; beim Alleinstehenden oder Haushaltsvorstand tritt an die Stelle des Vierfachen das Fünffache des Regelsatzes. Dies gilt nicht für Personen, deren Vermögen zur nachhaltigen Verbesserung ihres Unterhalts ausreicht und denen zugemutet werden kann, es dafür zu verwenden. Bei Personen, deren

[361] http://www.bmz.de/de/service/glossar/zivilgesellschaft..html, 15 November 2004.

[362] http://bundesrecht.juris.de/bundesrecht/ao_1977/index.html, 3 June 2005.

wirtschaftliche Lage aus besonderen Gründen zu einer Notlage geworden ist, dürfen die Bezüge oder das Vermögen die genannten Grenzen übersteigen. Bezüge im Sinne dieser Vorschrift sind

a) Einkünfte im Sinne des § 2 Abs. 1 des Einkommensteuergesetzes und

b) andere zur Bestreitung des Unterhalts bestimmte oder geeignete Bezüge, die der Alleinstehende oder der Haushaltsvorstand und die sonstigen Haushaltsangehörigen haben. Zu den Bezügen zählen nicht Leistungen der Sozialhilfe, Leistungen zur Sicherung des Lebensmittelunterhalts nach dem Zweiten Buch Sozialgesetzbuch und bis zur Höhe der Leistungen der Sozialhilfe Unterhaltsleistungen an Personen, die ohne die Unterhaltsleistungen sozialhilfeberechtigt wären, oder Anspruch auf Leistungen zur Sicherung des Lebensunterhalts nach dem Zweiten Buch Sozialgesetzbuch hätten. Unterhaltsansprüche sind zu berücksichtigen.

§ 54 Kirchliche Zwecke

(1) Eine Körperschaft verfolgt kirchliche Zwecke, wenn ihre Tätigkeit darauf gerichtet ist, eine Religionsgemeinschaft, die Körperschaft des öffentlichen Rechts ist, selbstlos zu fördern.

(2) Zu diesen Zwecken gehören insbesondere die Errichtung, Ausschmückung und Unterhaltung von Gotteshäusern und kirchlichen Gemeindehäusern, die Abhaltung von Gottesdiensten, die Ausbildung von Geistlichen, die Erteilung von Religionsunterricht, die Beerdigung und die Pflege des Andenkens der Toten, ferner die Verwaltung des Kirchenvermögens, die Besoldung der Geistlichen, Kirchenbeamten und Kirchendiener, die Alters- und Behindertenversorgung für diese Personen und die Versorgung ihrer Witwen und Waisen.

§ 55 Selbstlosigkeit

(1) Eine Förderung oder Unterstützung geschieht selbstlos, wenn dadurch nicht in erster Linie eigenwirtschaftliche Zwecke - zum Beispiel gewerbliche Zwecke oder sonstige Erwerbszwecke - verfolgt werden und wenn die folgenden Voraussetzungen gegeben sind:

1. Mittel der Körperschaft dürfen nur für die satzungsmäßigen Zwecke verwendet werden. Die Mitglieder oder Gesellschafter (Mitglieder im Sinne dieser Vorschriften) dürfen keine Gewinnanteile und in ihrer Eigenschaft als Mitglieder auch keine sonstigen Zuwendungen aus Mitteln der Körperschaft erhalten. Die Körperschaft darf ihre Mittel weder für die unmittelbare noch für die mittelbare Unterstützung oder Förderung politischer Parteien verwenden.

2.Die Mitglieder dürfen bei ihrem Ausscheiden oder bei Auflösung oder Aufhebung der Körperschaft nicht mehr als ihre eingezahlten Kapitalanteile und den gemeinen Wert ihrer geleisteten Sacheinlagen zurückerhalten.

3. Die Körperschaft darf keine Person durch Ausgaben, die dem Zweck der Körperschaft fremd sind, oder durch unverhältnismäßig hohe Vergütungen begünstigen.

4. Bei Auflösung oder Aufhebung der Körperschaft oder bei Wegfall ihres bisherigen Zwecks darf das Vermögen der Körperschaft, soweit es die eingezahlten Kapitalanteile der Mitglieder und den gemeinen Wert der von den Mitgliedern geleisteten Sacheinlagen übersteigt, nur für steuerbegünstigte Zwecke verwendet werden (Grundsatz der Vermögensbindung). Diese Voraussetzung ist auch erfüllt, wenn das Vermögen einer anderen steuerbegünstigten Körperschaft oder einer Körperschaft des öffentlichen Rechts für steuerbegünstigte Zwecke übertragen werden soll.

5. Die Körperschaft muss ihre Mittel grundsätzlich zeitnah für ihre steuerbegünstigten satzungsmäßigen Zwecke verwenden. Verwendung in diesem Sinne ist auch die Verwendung der Mittel für die Anschaffung oder Herstellung von Vermögensgegenständen, die satzungsmäßigen Zwecken dienen. Eine zeitnahe Mittelverwendung ist gegeben, wenn die Mittel spätestens in dem auf den Zufluss folgenden Kalender- oder Wirtschaftsjahr für die steuerbegünstigten satzungsmäßigen Zwecke verwendet werden.

(2) Bei der Ermittlung des gemeinen Werts (Absatz 1 Nr. 2 und 4) kommt es auf die Verhältnisse zu dem Zeitpunkt an, in dem die Sacheinlagen geleistet worden sind.

(3) Die Vorschriften, die die Mitglieder der Körperschaft betreffen (Absatz 1 Nr. 1, 2 und 4), gelten bei Stiftungen für die Stifter und ihre Erben, bei Betrieben gewerblicher Art von Körperschaften des öffentlichen Rechts für die Körperschaft sinngemäß, jedoch mit der Maßgabe, dass bei Wirtschaftsgütern, die nach § 6 Abs. 1 Nr. 4 Satz 4 und 5 des Einkommensteuergesetzes aus einem Betriebsvermögen zum Buchwert entnommen worden sind, an die Stelle des gemeinen Werts der Buchwert der Entnahme tritt.

§ 56 Ausschliesslichkeit

Ausschließlichkeit liegt vor, wenn eine Körperschaft nur ihre steuerbegünstigten satzungsmäßigen Zwecke verfolgt.

§ 57 Unmittelbarkeit

(1) Eine Körperschaft verfolgt unmittelbar ihre steuerbegünstigten satzungsmäßigen Zwecke, wenn sie selbst diese Zwecke verwirklicht. Das kann auch durch Hilfspersonen geschehen, wenn nach den Umständen des Falls, insbesondere nach den rechtlichen und tatsächlichen Beziehungen, die zwischen der Körperschaft und der Hilfsperson bestehen, das Wirken der Hilfsperson wie eigenes Wirken der Körperschaft anzusehen ist.

(2) Eine Körperschaft, in der steuerbegünstigte Körperschaften zusammengefasst sind, wird einer Körperschaft, die unmittelbar steuerbegünstigte Zwecke verfolgt, gleichgestellt.

§ 58 Steuerlich unschädliche Betätigungen

Die Steuervergünstigung wird nicht dadurch ausgeschlossen, dass

1. eine Körperschaft Mittel für die Verwirklichung der steuerbegünstigten Zwecke einer anderen Körperschaft oder für die Verwirklichung steuerbegünstigter Zwecke durch eine Körperschaft des öffentlichen Rechts beschafft; die Beschaffung von Mitteln für eine unbeschränkt steuerpflichtige Körperschaft des privaten Rechts setzt voraus, dass diese selbst steuerbegünstigt ist,

2. eine Körperschaft ihre Mittel teilweise einer anderen, ebenfalls steuerbegünstigten Körperschaft oder einer Körperschaft des öffentlichen Rechts zur Verwendung zu steuerbegünstigten Zwecken zuwendet,

3. eine Körperschaft ihre Arbeitskräfte anderen Personen, Unternehmen oder Einrichtungen für steuerbegünstigte Zwecke zur Verfügung stellt,

4. eine Körperschaft ihr gehörende Räume einer anderen steuerbegünstigten Körperschaft zur Benutzung für deren steuerbegünstigte Zwecke überlässt,

5. eine Stiftung einen Teil, jedoch höchstens ein Drittel ihres Einkommens dazu verwendet, um in angemessener Weise den Stifter und seine nächsten Angehörigen zu unterhalten, ihre Gräber zu pflegen und ihr Andenken zu ehren,

6. eine Körperschaft ihre Mittel ganz oder teilweise einer Rücklage zuführt,soweit dies erforderlich ist, um ihre steuerbegünstigten satzungsmäßigen Zwecke nachhaltig erfüllen zu können,

7. a) eine Körperschaft höchstens ein Drittel des Überschusses der Einnahmen über die Unkosten aus Vermögensverwaltung und darüber hinaus höchstens 10 vom Hundert ihrer sonstigen nach § 55 Abs. 1 Nr. 5 zeitnah zu verwendenden Mittel einer freien Rücklage zuführt,

b) eine Körperschaft Mittel zum Erwerb von Gesellschaftsrechten zur Erhaltung der prozentualen Beteiligung an Kapitalgesellschaften ansammelt oder im Jahr des Zuflusses verwendet; diese Beträge sind auf die nach Buchstabe a in demselben Jahr oder künftig zulässigen Rücklagen anzurechnen,

8. eine Körperschaft gesellige Zusammenkünfte veranstaltet, die im Vergleich zu ihrer steuerbegünstigten Tätigkeit von untergeordneter Bedeutung sind,

9. ein Sportverein neben dem unbezahlten auch den bezahlten Sport fördert,

10. eine von einer Gebietskörperschaft errichtete Stiftung zur Erfüllung ihrer steuerbegünstigten Zwecke Zuschüsse an Wirtschaftsunternehmen vergibt,

11. eine Körperschaft folgende Mittel ihrem Vermögen zuführt:

a) Zuwendungen von Todes wegen, wenn der Erblasser keine Verwendung für den laufenden Aufwand der Körperschaft vorgeschrieben hat,

b) Zuwendungen, bei denen der Zuwendende ausdrücklich erklärt, dass sie zur Ausstattung der Körperschaft mit Vermögen oder zur Erhöhung des Vermögens bestimmt sind,

c) Zuwendungen auf Grund eines Spendenaufrufs der Körperschaft, wenn aus dem Spendenaufruf ersichtlich ist, dass Beträge zur Aufstockung des Vermögens erbeten werden,

d) Sachzuwendungen, die ihrer Natur nach zum Vermögen gehören,

12. eine Stiftung im Jahr ihrer Errichtung und in den zwei folgenden Kalenderjahren Überschüsse aus der Vermögensverwaltung und die Gewinne aus wirtschaftlichen Geschäftsbetrieben (§ 14) ganz oder teilweise ihrem Vermögen zuführt.

§ 59 Voraussetzungen der Steuervergünstigung

Die Steuervergünstigung wird gewährt, wenn sich aus der Satzung, dem Stiftungsgeschäft oder der sonstigen Verfassung (Satzung im Sinne dieser Vorschriften) ergibt, welchen Zweck die Körperschaft verfolgt, dass dieser Zweck den Anforderungen der §§ 52 bis 55 entspricht und dass er ausschließlich und unmittelbar verfolgt wird; die tatsächliche Geschäftsführung muss diesen Satzungsbestimmungen entsprechen.

§ 60 Anforderungen an die Satzung

(1) Die Satzungszwecke und die Art ihrer Verwirklichung müssen so genau bestimmt sein, dass auf Grund der Satzung geprüft werden kann, ob die satzungsmäßigen Voraussetzungen für Steuervergünstigungen gegeben sind.

(2) Die Satzung muss den vorgeschriebenen Erfordernissen bei der Körperschaftsteuer und bei der Gewerbesteuer während des ganzen Veranlagungs- oder Bemessungszeitraums, bei den anderen Steuern im Zeitpunkt der Entstehung der Steuer entsprechen.

9.6.2. Company Tax Code

Company Tax Code "Körperschaftssteuergesetz (KStG)"[363]

§ 1 Unbeschränkte Steuerpflicht

(1) Unbeschränkt körperschaftsteuerpflichtig sind die folgenden Körperschaften, Personenvereinigungen und Vermögensmassen, die ihre Geschäftsleitung oder ihren Sitz im Inland haben:

1. Kapitalgesellschaften (Aktiengesellschaften, Kommanditgesellschaften auf Aktien, Gesellschaften mit beschränkter Haftung);

2. Erwerbs- und Wirtschaftsgenossenschaften;

3. Versicherungs- und Pensionsfondsvereine auf Gegenseitigkeit;

4. sonstige juristische Personen des privaten Rechts;

5. nichtrechtsfähige Vereine, Anstalten, Stiftungen und andere Zweckvermögen des privaten Rechts;

6. Betriebe gewerblicher Art von juristischen Personen des öffentlichen Rechts.

(2) Die unbeschränkte Körperschaftsteuerpflicht erstreckt sich auf sämtliche Einkünfte.

(3) Zum Inland im Sinne dieses Gesetzes gehört auch der der Bundesrepublik Deutschland zustehende Anteil am Festlandsockel, soweit dort Naturschätze des Meeresgrundes und des Meeresuntergrundes erforscht oder ausgebeutet werden.

9.6.3. Guidelines for the funding of projects of importance to development

The guidelines for funding of projects of importance to development "Förderrichtlinie zu Titel 687/06"[364] of the Federal Ministry for Economic Co-operation and Development

Guidelines for the funding of projects of importance to development implemented in developing countries by private German executing agencies

I. Funding guidelines

1. Purpose of funding, statutory basis

1.1 In accordance with these guidelines and on the basis of Articles 23 and 44 of the Federal Budgetary Ordinance and the provisional administrative regulations enacted in relation to that Ordinance, the Federal Ministry for Economic Co-operation and Development (BMZ) provides grants for projects implemented by private German executing agencies in those partner countries of development co-operation in which the federal German government has a development policy interest.

1.2 The applicant can claim no entitlement to grant funding.

1.3 The decision on whether to approve funding is made freely after a due assessment of the circumstances and on the basis of the budgetary funds available.

2. Subject of funding

In conformity with the federal German government's development principles and with international human rights conventions, funding is provided for projects and programmes that

[363] http://bundesrecht.juris.de/bundesrecht/kstg_1977/__1.html, 3 June 2004.

[364] http://www.paritaet.org/bengo/3/index.htm, 31 August 2005.

- bring about a direct and sustained improvement in the economic, social or ecological situation of the poor in the partner countries, provide effective support to the self-help efforts of these people and involve them as partners in the process of planning and implementation

- or foster observance of human rights in the partner countries.

3. Grant recipients

3.1 Grants may only be awarded to legal persons under private law (private executing agencies) that are headquartered and conduct their business in the Federal Republic of Germany and whose non-profit or charitable status is recognised under fiscal law. Collaboration with one-person corporations is not possible.

3.2 It is the policy not to provide funding to private executing agencies that are supervised and controlled by international private umbrella organisations or to private executing agencies of which public corporations or private companies are members. Where private executing agencies are part of an association made up of regional sub-groups, all co-operation is with the head organisation.

3.3 The private executing agency must have the expertise, staff and organisational capacity to plan, implement, monitor and account for projects in a professional way. The private executing agency's activities must be documented in the form of publicly accessible annual operating and financial reports.

3.4 The private executing agency must work with clearly identifiable, experienced and non-profit oriented project executing agencies in the partner country. Members of the private executing agency must not at the same time occupy an executive position within the project executing agency in the partner country.

3.5 The administrative costs of the private executing agency must bear an appropriate relation to its income. Proof of this may be provided by the certificate of donation-worthiness (Spendensiegel) awarded by the German Central Institute for Social Issues (Deutsches Zentralinstitut für soziale Fragen - DZI). Otherwise, it must be proven that at least 80% of the annual income of the private executing agency that is intended for use in the partner countries is spent on improving the situation of disadvantaged sections of the population.

3.6 The private executing agency's public relations work and fund-raising activities must provide pertinent information on the situation of the people in the partner countries. No funding is provided to private executing agencies that try to attract donations using dishonest or misleading information.

3.7 Funding can only be provided to a private executing agency if it satisfies the above criteria and if, before receiving funding, it has already carried out projects independently and over a continuous period of at least three years in the partner countries of development co-operation in collaboration with local project executing agencies in those countries.

3.8 The recipient of a grant can channel grant funds to suitable project executing agencies for projects in the partner countries, as long as this is specified in the grant notice. Funds are to be passed on by means of a contract under private law. Standard contracts are available from the Advice Centre for non-government organisations working in the field of development co-operation (bengo). Recipients of grants have an obligation to assert any contractual claims to reimbursement that may arise and to reimburse the funds returned immediately to the provider of the grant.

4. Conditions for grants

4.1 Funding is provided only to those projects whose clearly defined aims can be achieved without exceeding the intended budget and within a period of at most four years. In exceptional cases (e.g. where the project aim is widened), an extension or, in the case of the officially recognised development services, several extensions may be allowed.

4.2 There must be an appropriate ratio of project investments to operating expenses (including staff costs). Funding is not provided for projects where it would be used primarily to finance operating expenses.

4.3 Neither the recipient of the grant nor the project executing agency in the partner country may assign responsibility for the entire implementation of the project to a commercial enterprise (e.g. a consultancy firm).

5. Type, scope and level of funding

5.1 Type of funding

5.1.1 Funding is provided in the form of non-repayable grants in support of projects (co-financing or top-up financing).

5.1.2 Where a grant recipient is receiving funding for the first time, funding does not exceed € 37,500 (small projects). In all other cases, funding does not exceed € 500,000. If, in exceptional cases, funding of more than € 500,000 is to be provided for projects, a detailed study produced by independent experts in collaboration with the local project executing agency must be submitted (cf. 5.2.9).

5.1.3 Funding for a project covers at most 75% of the total eligible expenditure. The grant recipient must cover at least 10% from its own means, whilst the remaining 15% can be made up of other non-public funds or contributions from the partner country. In exceptional cases, the recognised development services may be exempted from this rule.

5.1.4 If other public funds (e.g. from the European Union or from one of the Länder in the Federal Republic of Germany) are to be used in addition to the funding applied for, they may be employed only for precisely demarcated measures and are to be referred to in the application. The financing plan and the sharing of expenditures (BMZ: 75%; grant recipient, possibly together with partner: 25%) remain unaffected by this, i.e. the other funds cannot be counted towards the recipient's own share.

5.1.5 Where the partner country is to make a counterpart contribution, it must be possible to place a value on this without excessive administrative effort.

5.1.6 In exceptional cases, the grant recipient may apply for permission to deploy its own funding at its own risk before the project has gained approval. The condition for this is that a project application based on the standard application format or the application form for small projects.

5.2 Expenditure eligible for grant funding

Funding contributions may be provided for the following items of project expenditure - or also as part of financing and credit systems

5.2.1 Expenditure on purchasing land and on construction work appropriate to local conditions.

5.2.2 Expenditure on the procurement and transport of equipment, materials and animals. In terms of quality, price, availability and maintenance or upkeep, the equipment, materials and animals must be adapted to local needs and should, if possible, be procured on the local market. If capital goods (e.g. production equipment, buildings) are passed on to the target group for their own private use or as a source of income, this must only take the form of a loan or must be in return for a suitable contribution or counter-performance.

5.2.3 Expenditure on local staff (including short-term training measures) who are directly involved in implementing the project. Staff costs must be in line with local standards and be in appropriate relation to total project expenditure. The amount claimed must in all cases be on a diminishing scale in order to ensure that the project will be able to survive even once the project has completed its term.

5.2.4 Expenditure on staff who have been sent by the grant recipient for direct involvement in project implementation is covered only in exceptional and particularly justified cases. The grant recipient must provide proof in advance that the experts have the personal and professional skills required for the work they are to perform and have been properly prepared. Salaries must be based on the incomes of development workers working for the German Development Service (DED). This also applies to foreign staff who are resident within the country concerned. In the case of the recognised development services, non-wage staff costs and other benefits are assumed in accordance with the German Development Aid Worker Law.

5.2.5 Operating expenditure for the project. The amount claimed must in all cases be on a diminishing scale in order to ensure that the project will be able to survive even once the project has completed its term.

5.2.6 Expenditure on cross-project seminars in the partner country is covered only in exceptional cases and only when these seminars deal with a subject directly related to one of the grant recipient's ongoing projects in the country concerned that is receiving funding in accordance with these guidelines.

5.2.7 Expenditure on project liaison visits once a year for projects of several years' duration but only in exceptional cases and with particular justification for one-year projects. Claims can be made for daily allowances and overnight accommodation costs in accordance with federal German legislation on the matter, for the costs of economy or tourist class air travel and second class rail travel and for inoculations, medication and visas.

5.2.8 Expenditure on project evaluation. The project application must contain a detailed account of the need for an evaluation. Where complex projects of several years' duration or pilot projects are concerned, a financial contribution towards evaluation by independent experts may be made. Expenditure on this may not exceed € 15,000. The recipient of the grant

must submit exact details of the evaluation programme beforehand (experts, plan of work in accordance with standard format, duration of evaluation) and subsequently the finished evaluation report together with a statement of position.

5.2.9 Expenditure on studies by independent experts that was incurred by the grant recipient in preparation of the project in the year in which the application was submitted, broken down into detail and up to a maximum of € 15,000. This expenditure must be included in the financing plan and can only be taken into account once the project has been approved and if expenditure on the study bears a reasonable relation to the total costs of the project.

5.2.10 In addition to the aforementioned project expenditure, grant funding may be provided to cover up to 3.5% of inflationary cost increases and unavoidable additional expenditure (contingencies) and a flat rate of up to 4% of administrative costs (calculated on the basis of project expenditure including contingency item).

6. Other provisions

6.1 Grant funding is processed in accordance with Germany's special collateral clauses governing the funding of projects of importance to development implemented by private German executing agencies. In particular, these clauses regulate grant applications, proof of use, verification of that proof and arrangements for passing on funding to the project executing agency in the partner country.

6.2 Funding for construction work is granted in accordance with Germany's procedural rules for construction work undertaken by political foundations and other agencies (Zbau/Stiftungen). Where construction work to the value of in excess of € 375,000 is concerned, the Federal Ministry of Transport, Building and Housing carries out an expert examination of the building work.

6.3 Funding for the transport of material donations of importance to development is granted in accordance with the most recent version of Germany's notes and explanations for grants towards the transport costs of material donations in developing countries.

7. Procedure

7.1 Applications procedure

Funding applications must be submitted in writing to the following address using the standard application format or the form developed for this purpose:

Beratungsstelle für private Träger

in der Entwicklungszusammenarbeit

- bengo –

Postfach 20 02 65

53132 Bonn

Bengo examines the formal aspects of the applicant and its application. It passes the applications on to the BMZ together with its recommendation.

7.2 Approval

The main responsibility for deciding whether to grant funding lies in the hands of the BMZ. Other ministries are involved in the decision as required by legal provisions, the joint rules of procedure for the German federal ministries and the special agreement with the Federal Ministry of Finance.

The Federal Foreign Office examines applications in term of foreign policy criteria and delivers its opinion, on which the ultimate decision is then based.

8. Entry into force

These guidelines shall enter into force on 1 January 1998.

9.6.4. German Institute for Social Issues

The application rules for the Seal of Approval by the German Institute for Social Issues[365]

Das Spenden-Siegel können Organisationen beantragen, welche die folgenden Voraussetzungen erfüllen und die Selbstverpflichtung mindestens für das der Antragstellung vorausgehende Geschäftsjahr eingehalten haben.

1. Sitz.

Die Organisation hat ihren Sitz in Deutschland.

2. Steuervergünstigung

[365] http://www.dzi.de/leitlinien.pdf, 29 August 2005.

Die Organisation ist als steuerbegünstigt im Sinne der §§ 51 ff. Abgabenordnung anerkannt, d.h. sie dient im Sinne der Abgabenordnung gemeinnützigen, mildtätigen oder kirchlichen Zwecken

3. Finanzierung

Das„Sammlungsergebnis" der Organisation beträgt im jüngsten abgeschlossenen Geschäftsjahr mehr als 10 v.H. ihrer Gesamteinnahmen. Organisationen, bei denen dieser Anteil nur bei 10 v.H. oder darunter liegt, können die Zuerkennung des Spenden-Siegels für ihren entsprechend abgegrenzten„Sammlungsbereich" beantragen.

4.Überregionalität

Die Organisation ist in ihrer Spenden sammelnden Tätigkeit überregional tätig.

5. Eigenverantwortlichkeit und Kontrolle

Die Organisation entscheidet grundsätzlich in eigener Verantwortung über die Verwendung ihrer Mittel.2Sofern eine Organisation mehr als die Hälfte ihrer Ausgaben an eine weitere Organisation zum endgültigen Mitteleinsatz weiterleitet, muss deren Mittelverwendungsnachweis analog zu der Jahresrechnung der Antrag stellenden Organisation in die Antragsbearbeitung einbezogen werden.3In jedem Fall muss die Antrag stellende Organisation die Mittelverwendung kontrollieren.

Die Organisation verpflichtet sich zur gewissenhaften, überprüfbaren Einhaltung folgender Bestimmungen

1. Zweckgerichtete Mittelverwendung

Alle eingeworbenen Spendenmittel werden nur für die angegebenen satzungsgemäßen Zwecke und unter Wahrung der einschlägigen steuerrechtlichen Vorschriften eingesetzt. 2Werbe- und Verwaltungsausgaben gelten als zweckgerichtet, wenn sie bei der Verfolgung der satzungsgemäßen Ziele der Organisation notwendig sind.

2.Wirksame Mittelverwendung

Die Verwendung von Spendenmitteln erfolgt nach dem Kriterium der größtmöglichen Wirksamkeit (unter Beachtung der Grundsätze der Wirtschaftlichkeit und Sparsamkeit).

3. Haushaltsplanung

Zur Sicherung von langfristig angelegten Hilfsmaßnahmen wird eine Einnahmen- und Ausgabenplanung erstellt.

4. Rücklagenbildung

Eine Rücklagenbildung ist gesondert auszuweisen und zu begründen. Zinseinnahmen aus Rücklagen für zweckbestimmte Spenden fließen der vorgegebenen Zwecksetzung zu.

5. Mitarbeitervergütung.

(1) Die Vergütungen und Sachzuwendungen der hauptamtlich beschäftigten Mitarbeiter orientieren sich im Regelfall an den in vergleichbaren Positionen des Öffentlichen Dienstes gezahlten Gesamtbezügen. Sofern Abweichungen hiervon gegeben sind, ist dies dem DZI durch den Antragsteller zu erläutern.

(2) EhrenamtlichTätige erhalten keine Vergütung; diesen können jedoch die notwendigen Aufwendungen ersetzt werden, die ihnen in Ausführung ihrer Aufgabe entstehen.

6. Sonstige Vergütungen.

Von Provisionen, Prämien oder vergleichbaren Erfolgsbeteiligungen für die Vermittlung von Spenden, Erbschaften oder sonstigen Zuwendungen wird grundsätzlich abgesehen. Für die Vermittlung von Mitgliedschaften bzw. Fördermitgliedschaften gilt Entsprechendes.

7.Spendenwerbung.

Die Spendenwerbung erfolgt stets unter Beachtung folgender Grundsätze:

a) Die Zweckbestimmung der Spenden oder Sammlungen sowie die Dringlichkeit der verfolgten Zwecke und die Eignung der geplanten Maßnahmen zur Erreichung dieser Zwecke werden öffentlich und nachvollziehbar dargelegt.

b) Die Wort- und Bildwerbung ist wahr, eindeutig und sachlich gehalten.2Werbung, die geeignet ist, den Spender in seiner unabhängigen, sachbezogenen Entscheidung zu behindern, wird unterlassen. Darüber hinaus hat die Darstellung von Not und Elend die Würde der Betroffenen zu wahren.

c) Bezeichnungen, Namen, Namenskürzungen, Aufmachungen, Zeichen u.a., welche geeignet sind, Verwechslungen mit Bezeichnungen, Namen, Namenskürzungen, Aufmachungen, Zeichen u.a. anderer Institutionen hervorzurufen oder den Eindruck einer Beziehung zu solchen Institutionen entstehen zu lassen, werden nicht verwendet.

d) Der Name der Organisation wird ausschließlich in Bezug auf die satzungsgemäßen Zwecke der Organisation eingesetzt. Eine Verwendung des Namens bzw. Logos durch gewerblich tätige Dritte ist nur dann zulässig, wenn der damit Umworbene eindeutig erkennen kann, dass er für gewerbliche Zwecke angesprochen wird. Die Verwendung des Namens im Zusammenhang mit Sozialsponsoring bleibt davon unberührt.

8. Rechnungslegung.

Die Organisation verpflichtet sich zu einer ordnungsgemäßen Rechnungslegung nach Maßgabe der Ausführungsbestimmungen.

9. Prüfungspflicht.

Die Organisation lässt ihre Rechnungslegung nach Maßgabe der Ausführungsbestimmungen prüfen und bestätigen.

10.Kontrolle.

(1) Das zur Entscheidung befugte Leitungsgremium (z.B.Vorstand) unterwirft sich einer inhaltlichen Kontrolle durch ein vom Leitungsgremium unabhängiges Aufsichtsorgan (z.B.Mitgliederversammlung). Sofern mindestens ein Mitglied des Leitungsgremiums seine Aufgabe hauptamtlich ausübt und/oder mindestens die Hälfte der Mitglieder des Leitungsgremiums miteinander verwandt oder verschwägert ist, unterliegt das Gremium zusätzlich der Kontrolle eines besonderen in der Satzung verankerten und von den Mitgliedern gewählten Aufsichtsorgans.3Bestehende Verwandtschaftsverhältnisse zwischen den Mitgliedern des Leitungsgremiums werden im Antragsverfahren gegenüber dem DZI dargelegt.

(2) Die Namen der Mitglieder von Leitungsgremium und besonderem Aufsichtsorgan warden jeweils im Jahresbericht veröffentlicht.

(3) Die Arbeit des Aufsichtsorgans wird durch den Nachweis der Entlastung des Leitungsgremiums anhand eines entsprechenden Protokollauszugs nachgewiesen. Dieser wird nach Maßgabe des Vertretungsrechts abgezeichnet.

11. Darlegungspflicht.

Dem DZI werden von der Organisation alle zur Antragstellung notwendigen Unterlagen nach Maßgabe der Ausführungsbestimmungen vorgelegt sowie alle Informationen erteilt, die es ermöglichen, die Einhaltung der Selbstverpflichtung festzustellen.

12.Siegel-Verwendung.

Das Spenden-Siegel wird von der Organisation nur in der geschützten Form und nur während der zuerkannten Geltungsdauer werbend eingesetzt.

10. Greece

10.1. Law on Associations

10.1.1. Art. 12 of the Constitution

Art. 12 of the Constitution[366]:

1. Greeks shall have the right to form non-profit associations and unions, in compliance with the law, which, however, may never subject the exercise of this right to prior permission.

2. An association may not be dissolved for violation of the law or of a substantial provision of its statutes, except by court judgment.

3. The provisions of the preceding paragraph shall apply, as the case may be, to unions of persons not constituting an association.

4. Agricultural and urban cooperatives of all types shall be self-governed according to the provisions of the law and of their statutes; they shall be under the protection and supervision of the State which is obliged to provide for their development.

5. Establishment by law of compulsory cooperatives serving purposes of common benefit or public interest or common exploitation of farming areas or other wealth producing sources shall be permitted, on condition however that the equal treatment of all participants shall be assured.

10.1.2. Civil Code

Hellenic Civil Code[367]

I - CONSTITUTION

Art. 78 - Création

Une union de personnes poursuivant un but non lucratif acquiert la personnalité par l'inscription sur le registre public (association) tenu à cet effet auprès du tribunal civil de son siège. Vingt personnes au moins sont nécessaires pour la constitution d'une association.

[366] http://www.ministryofjustice.gr/eu2003/constitution.pdf, 8 June 2005.

[367] Alfandari/Nardone, p. 41-43.

Art. 79 - Demande d'inscription

En vue de l'inscription de l'association sur le registre, une requête est soumise au tribunal civil par ses fondateurs ou son administration. Sont annexés à la requête l'acte constitutif, les noms des membres de l'administration et les statuts signés par les membres et datés.

Art. 80 - Statuts

Les statuts doivent fixer sous peine de nullité :

1 ° - le but, le nom et le siège de l'association,

2° - les conditions d'entrée, de sortie et d'exclusion des membres, ainsi que leurs droits et obligations ;

3° - les ressources de l'association ;

4° - le mode de représentation de l'association en justice et extrajudiciairement ;

5° - es organes d'administration de l'association, ainsi que les conditions de constitution et de fonctionnement de l'administration et de révocation de ses organes ; 6° - les conditions dans lesquelles est convoquée, délibère et décide l'assemblée des membres ;

7° - les conditions de modification des statuts ;

8° - les conditions de dissolution de l'association.

Art. 81 - Jugement d'inscription

Si les conditions légales sont remplies, le tribunal civil reçoit la requête et ordonne : 1° - la publication, par voie de presse, d'un résumé des statuts comprenant leurs éléments essentiels ;

2°- l ' inscription de l'association sur le registre des associations. Cette inscription comporte le nom et le siège de l'association, la date des statuts, les membres de l ' administration et les clauses limitatives de celleci.

Les statuts, certifiés par le président du tribunal, sont déposés aux archives de ce dernier.

Art. 82 - Recours contre le jugement (Toutes les voies de recours sont admises contre ce jugement (An. 76 du C .P.C.))

Seul l'appel est permis contre le jugement du tribunal civil. Contre le jugement qui rejette la requête, seul le requérant peut interjeter appel, et contre celui qui reçoit la requête, seule l'autorité de surveillance.

Art. 83 - Personnalité civile

L'association acquiert la personnalité à partir de son inscription sur le registre tenu à cet effet. Cette inscription est effectuée aussitôt que le jugement qui l'ordonne est devenu définitif.

Art. 84 - Modification des statuts : publicité

Toute modification des statuts n'est valable qu'après inscription sur le registre, suivant les dispositions des art. 79, 81 et 82.

Art. 85 - Dissolution de l'association : publicité

La dissolution d'une association intervenue de quelque façon que ce soit, ainsi que les noms des liquidateurs, sont mentionnés sur le registre des associations à côté de l'inscription. La mention est faite à la requête de l'administration de l'association, ou de l'autorité qui a provoqué la dissolution.

II - ORGANISATION - FONCTIONNEMENT

Art. 86 à 91 – Membres

L'entrée de nouveaux membres est en tout temps permise, si les statuts n'en disposent autrement.

Art. 87

Les membres ont le droit de se retirer de l'association. La sortie doit être annoncée trois mois au moins avant l'expiration de l'année financière et prend effet à la fin de celle-ci.

Art. 88

L'exclusion d'un membre est permise:

1° - dans les cas prévus par les statuts;

2° - pour motif grave et si l'assemblée le décide.

Le membre exclu peut former recours par devant le président du tribunal civil dans les deux mois à partir du jour où la décision d'exclusion a été portée à sa connaissance, si l'exclusion a été prononcé e contrairement aux clauses des statuts ou en l'absence de motifs graves.

Art. 89 - Droits des membres

Tous les membres de l'association possèdent des droits égaux. Des droits particuliers sont accordés ou retirés avec l'assentiment de tous les membres.

Art. 90

Les membres sortants de l'association n'ont aucun droit sur les biens de l'association.

Ils sont tenus au versement de leur cotisation en proportion du temps où ils furent membres.

Art. 91

La qualité de membre, si les statuts n'en disposent autrement, n'est pas susceptible de représentation; elle ne peut être ni cédée ni transmise par voie de succession.

Art. 92 - Administration

L'administration de l'association est composée de membres de l'association, si les statuts n'en disposent autrement.

Art. 93 à 102 - Assemblée générale

L'assemblée des membres constitue l'organe suprême de l'association et décide de toute question qui ne relève pas de la compétence d'un autre organe. L'assemblée, si les statuts n'en disposent autrement, élit notamment les personnes chargées de l'administration, décide de l'admission ou de l'exclusion d'un membre, de l'approbation du bilan, du changement du but de l'association, de la modification des statuts et de la dissolution de l'association.

Art. 94 - Attribution

L'assemblée a la surveillance et le contrôle des organes d'administration et possède le droit de les révoquer à n'importe quel moment, sous réserve du droit de ceux-ci de réclamer la rétribution convenue. Le droit de révocation de l'assemblée ne peut être limité par les statuts, dans la mesure ou la révocation des organes est dictée par des motifs graves, et notamment par un manquement grave à leurs devoirs, ou par l'incapacité d'administrer régulièrement.

Art. 95 - Convocation

L'assemblée est convoquée par l'administration dans les cas fixés par les statuts ou lorsque cela est imposé par l'intérêt de l'association.

Art. 96

L'assemblée est convoquée si un nombre de membres, fixé par les statuts, en fait la demande. A défaut d'une telle fixation, la convocation peut être demandée par le cinquième des membres, sur requête écrite, portant mention des matières à discuter.

S'il n'est pas fait droit à la demande, le président du tribunal civil peut autoriser les requérants à convoquer l'assemblée et régler aussi les questions relatives à sa présidence.

Art. 97 - Décisions

Les décisions de l'assemblée sont prises à la majorité absolue des membres présents. Est nulle la décision relative à une matière non inscrite sur l'avis de convocation.

La décision peut aussi être prise sans réunion des membres si tous les membres déclarent par écrit leur adhésion à une proposition.

Art. 98

Un membre n'a pas droit de vote si la décision concerne l'accomplissement d'un acte juridique ou bien l'introduction ou la suppression d'une instance entre, d'une part, l'association et, d'autre part, ce membre ou son conjoint ou un de ses parents jusqu'au troisième degré inclusivement.

Art. 99

Pour prendre une décision au sujet de la modification des statuts ou de la dissolution de l'association, la présence de la moitié au moins des membres et la majorité des trois quarts des membres présents sont requises.

Art. 100

Pour prendre une décision au sujet du changement du but de l'association, l'assentiment de tous les membres est requis. L'assentiment des absents est donné par écrit.

Art. 101

Est nulle toute décision de l'assemblée contraire à la loi ou aux statuts. La nullité de la décision est prononcée par le tribunal sur l'assignation d'un membre n'y ayant pas donné son assentiment ou de toute personne ayant un intérêt légitime. L'action en justice est exclue après l'expiration de six mois à partir de la décision de l'assemblée.

Le jugement prononçant la nullité est valable au profit et à l'encontre de tous.

Art. 102

Le président du tribunal civil peut, à la requête de l'administration de l'association ou d'un des membres de l'association, ou du procureur du Roi, ordonner qu'il sera sursis à l 'exécution d'une décision nulle.

III - DISSOLUTION - LIQUIDATIO N

Art. 103 - Dissolution volontaire

L'association est dissoute en tout temps par décision de l' assemblée des membres.

Art. 104 - Dissolution statutaire

L'association est dissoute dans les cas fixés à ce sujet par les statuts. L'association est dissoute dès que le nombre de ses membres est réduit à moins de dix.

Art. 105 - Dissolution judiciaire

L'association peut être dissoute par jugement du tribunal civil à la requête de l'administration de l'association, ou du cinquième des membres, ou de l'autorité de surveillance :

1 ° - si, en raison de la diminution du nombre des membres, ou pour d'autres motifs, la constitution d'une administration est rendue impossible ou si, d'une façon générale, la continuation de l'association en conformité des statuts devient impossible,

2°- si le but de l'association a été accompli ou si l'abandon de son but résulte d'une longue inaction,

3°- si l'association poursuit un but différent de celui fixé par les statuts, ou bien si le but ou le fonctionnement de l'association est devenu illicite ou immoral ou contraire à l'ordre public.

Le jugement du tribunal civil est susceptible seulement d'appel (Cette disposition a été abrogée par l'article 53 de la loi d'introduction au C.P.C.).

Art. 106 - Liquidation

Les biens de l'association dissoute ne sont en aucun cas partagés entre les membres.

Art. 107 - Dispositions applicables aux unions ne constituant pas des associations

Aux unions de personnes créées en vue de la poursuite d'un but, et ne constituant pas une association sont applicables, s'il n'en est pas disposé autrement, les dispositions relatives aux sociétés. Aussitôt qu'une telle union est convertie en association, le transfert des biens à celle-ci s'opère suivant les dispositions générales.

10.1.3. Law on philantrophic associations

Law 1111/1972 on the legal status of philanthropic nonprofit associations "ΝΟΜΟΘΕΤΙΚΟΝ ΔΙΑΤΑΓΜΑ Υπ' ΑΡΙΘ. 1111 (ΦΕΚ 23/72)"[368]:

Περί Φιλανθρωπικών σωματείων

Προτάσει του Ημετέρου Υπουργικού Συμβουλίου, απεφασίσαμεν και διατάσσομεν

[368] http://www.disability.gr/gr-arts/nd1111.html, 22 February 2005.

ΚΕΦΑΛΑΙΟΝ ΠΡΩΤΟΝ ΓΕΝΙΚΑΙ ΔΙΑΤΑΞΕΙΣ

Άρθρο 1

Έννοια

1. Φιλανθρωπικά σωματεία είναι τα έχοντα σκοπόν την παροχήν υλικής και ηθικής προστασίας ή αρωγής εις άτομα ή ομάδας ατόμων ευρισκόμενα μονίμως ή προσκαίρως εις κατάστασιν αποδεδειγμένης ανάγκης

2. Το καταστατικόν του φιλανθρωπικού Σωματείου δεν δύναται να προβλέπει και έτερον σκοπόν διάφορον του της προηγουμένης παραγράφου, εκτός εάν ούτος συνδέεται αμέσως προς τας γενικωτέρας επιδιώξεις του Σωματείου.

Άρθρο 2

Διάκρισις Φιλανθρωπικών σωματείων

1. Τα Φιλανθρωπικά Σωματεία διακρίνονται εις ειδικώς ανεγνωρισμένα και μη ειδικώς ανεγνωρισμένα.

2. Επί των ειδικώς ανεγνωρισμένων Σωματείων εφαρμόζονται, πλην των γενικών διατάξεων του παρόντος και αι τοιαύται των άρθρων 18 έως και 227 του παρόντος.

Άρθρο 3

Παροχή προστασίας

Τα Φιλανθρωπικά Σωματεία εις ουδεμίαν περίπτωσιν δύνανται να παρέχουν την κατά την παράγραφον 1 του άρθρου 1 αρωγήν, ή προστασίαν επί αντιπαροχή ή καταβολή τροφείων, νοσηλείων ή οιουδήποτε άλλου ανταλλάγματος εκ μέρους των βοηθουμένων ή τρίτων.

Άρθρο 4

Προστατευόμενα πρόσωπα

1. Δια του καταστατικού καθορίζονται αι κατηγορίαι των προσώπων εις α παρέχεται η κατά το άρθρον 1 του παρόντος προστασία ή αρωγή, ως και ο τρόπος παροχής ταύτης.

2. Της τοιαύτης προστασίας ή αρωγής δεν δύνανται καθ, οιονδήποτε τρόπον να τύχουν τα μέλη του Σωματείου.

Άρθρον 5

Άρσις αμφισβητήσεως

Επί αμφισβητήσεως του χαρακτήρος του Σωματείου ως Φιλανθρωπικού αποφαίνεται το μονομελές Πρωτοδικείον τη αιτήσει της διοικήσεως αυτού ή της εποπτευούσης αρχής η παντός έχοντος έννομον συμφέρον κατά την διαδικασίαν των διατάξεων περί εκουσίας δικαιοδοσίας του Κώδικος Πολ. Δικονομίας.

Άρθρο 6

Υποχρεώσεις συστάσεως ιδρύματος

1. Φιλανθρωπικά Σωματεία σκοπούντα την παροχήν ωργανωμένης περιθάλψεως, υποχρεούνται όπως, εντός εξ μηνών από της δημοσιεύσεως του παρόντος, προβούν εις διάθεσιν περιουσίας και σύστασιν ιδρύματος κατά τας διατάξεις των άρθρων 108-121 του Αστικού Κώδικος.

2. εφ' εξής συνιστώμενα Φιλανθρωπικά Σωματεία, σκοπούντα κατά το καταστατικόν των την παροχήν οργανωμένης περιθάλψεως, δεν δύνανται να επιδιώκουν τον σκοπόν τούτον εκτός εάν προβούν εις διάθεσιν περιουσίας και σύστασιν ιδρύματος κατά τας υπό της προηγουμένης παραγράφου διατάξεις.

3. Το υπό των διατάξεων των άρθρων 108-121 του Αστικού Κώδικος προβλεπόμενον Β.Δ. εκδίδεται τη προτάσει του Υπουργού Κοινωνικών Υπηρεσιών και υπό την προϋπόθεσιν της προηγουμένης διαπιστώσεως, ότι οι διατιθέμενοι πόροι επαρκούν προς εκπλήρωσιν του σκοπού του Ιδρύματος.

Άρθρο 7

Εποπτεύουσα Αρχή

1. Ανωτέρα εποπτική αρχή επί των Φιλανθρωπικών Σωματείων είναι ο Υπουργός Κοινωνικών Υπηρεσιών.

Ο Υπουργός Κοινωνικών Υπηρεσιών δύναται να παρέχη γενικάς κατευθυντηρίους οδηγίας περί προσαρμογής της δράσεως των Φιλανθρωπικών Σωματείων προς το ευρύτερον κρατικόν πρόγραμμα κοινωνικής προστασίας και συντονισμού της λειτουργίας αυτών επί σκοπώ αποφυγής ενισχύσεως των αυτών προσώπων

υπό πολλαπλών φορέων δια την αυτήν αιτίαν.

2. Η κατά το άρθρον 26 του Ν.Δ. 2795/71 εποπτεία επί των Φιλανθρωπικών Σωματείων, ασκείται δια των οικείων Νομαρχιών, υπό δε του Υφυπουργού Περιφερειακού Διοικητού εάν η

λειτουργία του Σωματείου εκτείνεται εις πλείονας του ενός νομού ή καθ, άπασαν την Επικράτειαν.

Άρθρο 8

Οικονομικός έλεγχος

Ο οικονομικός έλεγχος των Φιλανθρωπικών Σωματείων ασκείται κατά τα εν άρθρω 17 του Ν.Δ. 795/71 οριζόμενα ως και υπό των Υπηρεσιών Επιθεωρήσεως Κοινωνικών Υπηρεσιών των οικείων Περιφερειακών Διοικήσεων ή Νομαρχιών κατ' εφαρμογήν των διεπουσών τας Υπηρεσίας ταύτας, διατάξεων.

Άρθρο 9

Είσπραξις εσόδων - Κτηματολόγιον

1. Η είσπραξις παντός εσόδου υπό του Φιλανθρωπικού Σωματείου ενεργείται βάσει διπλοτύπου εισπράξεως εκ των προτέρων θεωρουμένου παρά της Υπηρεσίας Κοινωνικών Υπηρεσιών της οικείας Νομαρχίας.

2. Η ακίνητος περιουσία του Φιλανθρωπικού Σωματείου παρακολουθείται, δια του βιβλίου κτηματολογίου, όπερ είναι εκ των προτέρων θεωρημένον παρά της οικείας Νομαρχίας.

Άρθρο 10

Προϋπολογισμός - Ισολογισμός

1. Ο προϋπολογισμός του Φιλανθρωπικού Σωματείου υποβάλλεται εις διπλούν άμα τη εγκρίσει του υπό του αρμοδίου οργάνου του Σωματείου εις τον Υφυπουργόν Περιφερειακόν Διοικητήν, προκειμένου περί Φιλανθρωπικών Σωματείων ων η λειτουργία εκτείνεται εις πλείονας του ενός νομού, άλλως εις τον Νομάρχην της

έδρας του Σωματείου.

2. Ο Ισολογισμός του Φιλανθρωπικού Σωματείου του οποίου το ύψος του ενεργητικού και παθητικού υπερβαίνει το ποσόν του ενός εκατομμυρίου δραχμών δημοσιεύεται υποχρεωτικώς δια της Εφημερίδος της Κυβερνήσεως. Το ως άνω ποσόν δύναται ν, αναπροσαρμόζεται εκάστοτε δι' αποφάσεως του Υπουργικού Συμβουλίου

Άρθρο 11

Μείωσις Μελών

Η κατά το άρθρον 104 του Αστικού Κώδικος μείωσις του αριθμού των μελών Φιλανθρωπικού Σωματείου δεν συνεπάγεται την διάλυσιν αυτού, εφ' όσον το μονομελές Πρωτοδικείον, αιτήσει της εποπτευούσης αρχής, διορίση προσωρινήν διοίκησιν και εκ μη μελών αυτού και εφ' όσον κατά την διαρκειαν της θητείας της οριζομένης δια της δικαστικής αποφάσεως ήθελε συμπληρωθεί ο κατά νόμον απαιτούμενος ελάχιστος αριθμός μελών.

Άρθρο 12

Μεταβολή του σκοπού

Μεταβ ολή του σκοπού του Φιλανθρωπικού Σωματείου εις έτερον τοιούτον, μη προβλεπόμενον υπό του άρθρου 1 του παρόντος, αποτελεί λόγον διαλύσεως αυτού, ήτις χωρεί υποχρεωτικώς, μη εχούσης εν προκειμένω εφαρμογής της διατάξεως του άρθρου 100 του Α.Κ.

Άρθρο 13

Εκκαθάρισις

Οι εκκαθαρισταί των διαλυομένων Φιλανθρωπικών Σωματείων ορίζονται υπό του Δικαστηρίου.

Άρθρο 14

Κυβερνητικός Επίτροπος

Εις τα ειδικώς ανεγνωρισμένα Φιλανθρωπικά Σωματεία, ως και εις τα μη ειδικώς ανεγνωρισμένα τοιαύτα, τα οποία επιχορηγούνται υπό του κράτους ή έχουν κοινωνικούς πόρους, δύναται να διορίζεται παρά του οικείου Υφυπουργού Περιφερειακού Διοικητού προκειμένου περί Φιλανθρωπικών Σωματείων, ων η λειτουργία.

εκτείνεται εις πλείονας του ενός νομού, άλλως υπό του Νομάρχου της έδρας του Σωματείου, Κυβερνητικός Επίτροπος, μόνιμος δημόσιος υπάλληλος κεκτημένος βαθμόν τουλάχιστον 6ον. Ούτος παρίσταται εις τας συνεδριάσεις της διοικήσεως αυτού και παρακολουθεί την νομιμότητα των λαμβανομένων αποφάσεων. Εν περιπτώσει διατυπώσεως υπό του Κυβερνητικού Επιτρόπου αντιθέτου γνώμης ως προς την νομιμότητα της λαμβανομένης αποφάσεως εκ μέρους της διοικήσεως του Φιλανθρωπικού Σωματείου, την διαφωνίαν επιλύει η οικεία εποπτεύουσα αρχή εντός 15 ημερών από της υποβολής αυτής της σχετικής πράξεως άλλως η

απόφασις εκτελείται υπ' ευθύνη της διοικήσεως του Φιλανθρωπικού Σωματείου.

Άρθρο 15

Τύχη περιουσίας

Η περιουσία του διαλυθέντος Φιλανθρωπικού Σωματείου περιέρχεται εις έτερον Φιλανθρωπικόν Σωματείον ή Ίδρυμα Κοινωνικής Προνοίας, οριζόμενον υπό του μονομελούς Πρωτοδικείου, αιτήσει της εποπτευούσης αρχής κατά την διαδικασίαν της εκουσίας δικαιοδοσίας του Κώδικος Πολ. Δικονομίας.

Άρθρο 16

Αποζημίωσις μελών Διοικήσεως

1. Μέλη Διοικήσεως Φιλανθρωπικών Σωματείων δεν δικαιούνται καθ' οιονδήποτε τρόπον αποζημιώσεως ουδέ δύναται να προβλεφθή εν τω καταστατικώ, συμφώνως τη παρ. 2 του άρθρου 15 του Ν.Δ. 795/71, απόζημίωσις δι' ημεραργίας ή δι' άλλην αιτίαν.

2. Απαγορεύεται η μίσθωσις ακινήτου ανήκοντος εις το Σωματείον υπό των μελών της Διοικήσεως αυτού ή συγγενών αυτών, κατ, ευθείαν μεν γραμμήν απεριορίστως, εκ πλαγίου δε μέχρι και του τετάρτου βαθμού.

3. Απαγορεύεται ωσαύτως η μίσθωσις ακινήτου ανήκοντος εις το Σωματείον υπό προσωπικών εταιρειών των οποίων τα μέλη είναι συγγενείς των μελών της Δ/σεως του Φιλανθρωπικού Σωματείου κατ' ευθείαν μεν γραμμήν απεριορίστως εκ πλαγίου δε μέχρι και του τετάρτου βαθμού.

4. Η υπό της προηγουμένης παραγράφου του παρόντος απαγόρευσις ισχύει και δια τας Ανωνύμους Εταιρείας τα μέλη του Διοικητικού Συμβουλίου των οποίων είναι συγγενείς των μελών της Διοικήσεως του Φιλανθρωπικού Σωματείου κατ, ευθείαν μεν γραμμήν απεριορίστως εκ πλαγίου δε μέχρι και του τετάρτου βαθμού.

5. Τυχόν υφιστάμεναι, κατά την έναρξιν ισχύος του παρόντος Νομοθετικού Διατάγματος, μισθώσεις προς φυσικά ή νομικά πρόσωπα, περί ων αι προηγούμεναι Παράγραφοι του παρόντος άρθρου, θεωρούνται λελυμέναι μετά εν έτος από της ενάρξεως ισχύος του παρόντος.

Άρθρο 17

Μέλη Διοικήσεως Φιλανθρωπικών σωματείων

1. Δεν δύνανται να είναι μέλη της Διοικήσεως Φιλανθρωπικών Σωματείων

α) αλλοδαποί,

β) καταδικασθέντες αμετακλήτως οις οιανδήποτε ποινήν επί κακουργήματι, ή επί τινι των πλημμελημάτων της κλοπής, υπεξαιρέσεως, απάτης, απιστίας, λαθρεμπορίας, εκβιάσεως, πλαστογραφίας, συκοφαντικής δυσφημήσεως, κιβδηλίας, παραχαράξεως, παραβάσεως των διατάξεων περί ναρκωτικών, παραβάσεως των διατάξεων περί προστασίας του εθνικού νομίσματος ως και παντός αδικήματος εξ ιδιοτελείας πηγάζοντος, ή επί εγκλήματι κατά των ηθών, ή έχουν αποστερηθή, λόγω καταδίκης επί οιαδήποτε αξιοποίνω πράξει, των πολιτικών των δικαιωμάτων και εφ, όσον διαρκεί η αποστέρησις αύτη.

2. Πας υποψήφιος δι' ανάδειξιν αυτού εις την Διοίκησιν Φιλανθρωπικού τινος Σωματείου υποχρεούται όπως προ της αναδείξεώς του υποβάλη εις το Σωματείον τουτο την κατά το Ν.Δ. 105/69 προβλεπομένην δήλωσιν, περί του ότι εν τω προσώπω του ουδέν συντρέχει εκ των, υπό της προηγουμένης παραγράφου του παρόντος άρθρου, αναφερομένων κωλυμάτων.

3. Ο Υφυπουργός Περιφερειακός Διοικητής εν συνδρομή αποχρώντος λόγου δύναται να ζητή και λαμβάνη αντίγραφον του Ποινικού Μητρώου προσώπου ή προσώπων μετεχόντων εις την διοίκησιν Φιλανθρωπικού Σωματείου.

4. Μέλη Διοικήσεως Φιλανθρωπικού Σωματείου δεν δύναται να είναι μέλη Διοικήσεως ετέρου Φιλανθρωπικού Σωματείου επιδιώκοντος τους αυτούς σκοπούς.

ΚΕΦΑΛΑΙΟΝ ΔΕΥΤΕΡΟΝ ΕΙΔΙΚΩΣ ΑΝΕΓΝΩΡΙΣΜΕΝΑ ΦΙΛΑΝΘΡΩΠΙΚΑ ΣΩΜΑΤΕΙΑ

Άρθρο 18

Διαδικασία ειδικής αναγνωρίσεως

1. Φιλανθρωπικόν Σωματείον ίνα τύχη ειδικής αναγνωρίσεως, δέον να υποβάλη εις την οικείαν Νομαρχίαν αίτησιν συνοδευομένην υπό αντιγράφου

α) της δικαστικής αποφάσεως περί εγκρίσεως του καταστατικού και τυχόν τροποποιήσεων αυτού,

β) του εν ισχύ καταστατικού και των τυχόν τροποποιήσεων αυτού,

γ) πρακτικού της Συνελεύσεως των μελών περί υποβολής της αιτήσεως,

δ) πίνακος περιέχοντος το ονοματεπώνυμον και το επάγγελμα των αποτελούντων την διοίκησιν και.

των μελών του Σωματείου μετά των διευθύνσεων αυτών,

ε) λεπτομερούς εκθέσεως περί της εν γένει δράσεως του Σωματείου και της οικονομικής αυτού κατάστάσεως.

2. Ο Νομάρχης υποβάλλει, εντός μηνός από της λήψεώς των, πάντα τα κατά την προηγουμένην παράγραφον στοιχεία εις τον οικείον Υφυπουργόν Περιφερειακόν Διοικητήν, εκφέρων την γνώμην αυτού, επί της σκοπιμότητος της κατά το παρόν Νομοθ. Διάταγμα ειδικής αναγνωρίσεως του σωματείου ως Φιλανθρωπικού.

3. Ο Νομάρχης και ο Υφυπουργός Περιφερειακός Διοικητής δύναται να αξιώσουν την προσαγωγήν και άλλων στοιχείων, άτινα κατά την κρίσιν αυτών είναι απαραίτητα, ίνα μορφώσουν γνώμην περί της ανάγκης της ειδικής αναγνωρίσεως του Σωματείου.

4. Η ειδική αναγνώρισις ως Φιλανθρωπικού του Σωματείου ενεργείται δι' αποφάσεως του οικείου Υφυπουργού Περιφερειακού Διοικητού, δημοσιευομένης δια της Εφημερίδος της Κυβερνήσεως. Αύτη δύναται να γίνη υπό όρους, ρητώς μνημονευομένους εν τη περί αναγνωρίσεως εκδιδομένη αποφάσει.

5. Αντίγραφον της περί ειδικής αναγνωρίσεως Φιλανθρωπικού Σωματείου αποφάσεως αποστέλλεται εντός μηνός από της εκδόσεως ταύτης, μερίμνη του Υφυπουργού.Περιφερειακού Διοικητού εις την Γραμματείαν του Πρωτοδικείου και τίθεται εντός 10 ημερών εις τον οικείον φάκελλον.

6. Υπό τον τίτλον του κατά τα ανωτέρω ως Φιλανθρωπικού αναγνωρισθέντος Σωματείου αναγράφεται υποχρεωτικώς η φράσις «Ειδικώς αναγνωρισμένον ως Φιλανθρωπικόν».

Άρθρο 19

Οικονομική ενίσχυσις

1. Εισφοραί και πάσης φύσεως επιχορηγήσεις του Δημοσίου, των Δήμων και Κοινοτήτων και των λοιπών νομικών προσώπων δημοσίου δικαίου, ως και των νομικών προσώπων ιδιωτικού δικαίου των απολαυόντων ειδικών προνομίων εκ μέρους του Κράτους, δύνανται να παρέχωνται μόνον προς ειδικώς ανεγνωρισμένα Φιλανθρωπικά Σωματεία.

2. Αι κατά τον Ν. 5101/31 άδειαι διενεργείας εράνων και φιλανθρωπικών αγορών προς εκπλήρωσιν φιλαθρωπικού σκοπού δύνανται να παρασχεθούν μόνον εις ανεγνωρισμένα φιλανθρωπικά Σωματεία.

Άρθρο 20

Έγκρισις Προϋπολογισμού

1. Οι προϋπολογισμοί των ειδικώς ανεγνωρισμένων Φιλανθρωπικών Σωματείων υποβάλλονται προς έγκρισιν εις τον Υφυπουργόν Περιφερειακόν Διοικητήν προκειμένου περί Φιλανθρωπικών Σωματείων ων η λειτουργία εκτίνεται εις πλείονας του ενός νομού, άλλως εις τον Νομάρχην της έδρας του Σωματείου, ένα τουλάχιστον μήνα προ της ενάρξεως του οικονομικού έτους.

2. Οι κατά την προηγούμενην παράγραφον αρμόδιοι, δύνανται να μεταρρυθμίζουν δι' ητιολογημένης αποφάσεώς των τον υποβληθέντα προϋπολογισμόν εντός μηνός από της υποβολής του.

3. Παρελθούσης απράκτου της ως άνω τασσομένης προθεσμίας, ο προϋπολογισμός εκτελείται ως υπεβλήθη.

Άρθρο 21

Μεταβίβασης ακινήτων και εκτέλεσις έργων

1. Δια πάσαν παρ' ειδικώς ανεγνωρισμένου Φιλανθρωπικού Σωματείου εκτέλεσιν έργων, αγοράν ή πώλησιν ακινήτου εκχώρησιν ή εκποίησιν, περιουσιακών στοιχείων, απαιτείται έγκρισις του Υφυπουργού Περιφερειακού Διοικητού προκειμένου περί Φιλανθρωπικών Σωματείων ων η λειτουργία εκτείνεται εις πλείονας του ενός Νομού, άλλως του Νομάρχου της έδρας του Σωματείου.

Το ποσόν δια το οποίον απαιτείται η κατά τα' ανωτέρω έγκρισις ορίζεται εκάστοτε δι' αποφάσεως του Υπουργικού Συμβουλίου, δημοσιευομένης δια της Εφημερίδος της Κυβερνήσεως.

2. Η εκποίησις ακινήτων ανηκόντων κατά κυριότητα εις Φιλανθρωπικά Σωματεία ειδικώς ανεγνωρισμένα ενεργείται πάντοτε μετά δημόσιον διαγωνισμόν, επί ποινή ακυρότητος.

3. Τα πρακτικά του ως άνω διαγωνισμού υπόκεινται από απόψεως του νομοτύπου της διεξαγωγής και του συμφόρου της επιτευχθείσης τιμής, εις την έγκρισιν της εποπτευούσης αρχής, υποχρεουμένης να εκδώσει την απόφασίν της εντός μηνός από της υποβολής των.

Παρελθούσης απράκτου της προθεσμίας ταύτης ο διαγωνισμός θεωρείται εγκριθείς.

Άρθρο 22

Ενημέρωσις εποπτευούσης αρχής

Τα ειδικώς ανεγνωρισμένα Φιλανθρωπικά Σωματεία υποχρεούνται να υποβάλλουν, δια της οικείας Νομαρχίας εις τον Υφυπουργόν Περιφερειακόν Διοικητήν μέχρι τέλους Απριλίου εκάστου έτους, πλην των εν άρθρω 28 του Ν.Δ. 795/1971 στοιχείων, έκθεσιν περί των πεπραγμένων του παρελθόντος ημερολογιακού έτους και περί της διαχειρήσεως των τυχόν ληφθεισών επιχορηγήσεων και δωρεών του Δημοσίου ή νομικού προσώπου εκ των εν άρθρω 19 οριζομένων.

Άρθρο 23

Παραίτησις από της ειδικής αναγνωρίσεως

1. Δια την παραίτησιν από της ειδικής αναγνωρίσεως υποβάλλεται υπό της διοικήσεως του Σωματείου αίτησις εις τον Υφυπουργόν Περιφερειακόν Διοικητήν δια της οικείας Νομαρχίας μετ' αντιγράφου της αποφάσεως της

Συνελεύσεως των μελών περί της παραιτήσεως.

2. Η αποδοχή της παραιτήσεως ενεργείται δι' αποφάσεως του Υφυπουργού .Περιφερειακού Διοικητού δημοσιευομένης δια της Εφημερίδος της Κυβερνήσεως.

3. Η δήλωσις παραιτήσεως και η περί αποδοχής ταύτης απόφασις κατατίθενται μερίμνη της διοικήσεως του σωματείου εις την Γραμματείαν του Πρωτοδικείου ίνα τεθή εις τον οικείον φάκελλον.

4. Ο Υφυπουργός Περιφερειακός Διοικητής δύναται δι' ητιολογημένης αποφάσεώς του, εκδιδομένης εντός τριμήνου από της υποβολής της αιτήσεως παραιτήσεως να αναβάλλη την αποδοχήν ταύτης επί χρονικόν διάστημα μέχρις εξ μηνών.

Άρθρο 24

Περιορισμοί μετά την παραίτησιν

1. Αι διατάξεις των άρθρων 20 έως 22 του παρόντος εξακολουθούν να διέπουν Φιλανθρωπικόν Σωματείον ειδικώς αναγνωρισθέν και μετά την αποδοχήν της παραιτήσεως από της ως άνω αναγνωρίσεως, επί χρονικόν διάστημα μέχρι δέκα ετών, εφ, όσον εις το Σωματείον τούτο έχουν παρασχεθή υπό του Δημοσίου ή υπό.

οιουδήποτε νομικού προσώπου δημοσίου δικαίου ή ιδιωτικού δικαίου απολαυόντος ειδικών προνομίων εκ μέρους του Κράτους, επιχορηγήσεις, ή εισφοραί ή εφ' όσον τούτο έτυχε δανείων εκ μέρους πιστωτικών ιδρυμάτων υπό την ανωτέρω ιδιότητα αυτού ως ειδικώς ανεγνωρισμένον ή έτυχεν αδείας εράνου ή φιλανθρωπικής αγοράς.

2. Δια την κατά την προηγούμενην παράγραφον Παράτασιν της ισχύος των διατάξεων των άρθρων 20 έως 22 απαιτείται ητιολογημένη απόφασις του Υφυπουργού Περιφερειακού Διοικητού εκδιδομένη εντός τριμήνου από της υποβολής της αιτήσεως παραιτήσεως.

Άρθρο 25

Άρσις ειδικής αναγνωρίσεως

1. Η ειδική αναγνώρισις Φιλανθρωπικού Σωματείου αίρεται δι' ητιολογημένης αποφάσεως του Υφυπουργού Περιφερειακού Διοικητού δημοσιευομένης δια της ΕΦημερίδος της Κυβερνήσεως

α) εάν εξέλιπον οι όροι και προϋποθέσεις υφ' ους εγένετο η αναγνώρισις, και

β) εάν η δράσις ή η λειτουργία του Σωματείου είναι αντίθετος προς τον Νόμον.

2. Αι διατάξεις των άρθρων 23 παρ. 4 και 24 του παρόντος εφαρμόζονται αναλόγως και επί άρσεως της ειδικής αναγνωρίσεως.

Άρθρο 26

Απαγόρευσις χρησιμοποιήσεως τίτλων

Απαγορεύεται εις Φιλανθρωπικά Σωματεία μη τυχόντα ειδικής αναγνωρίσεως η χρησιμοποίησις οιουδήποτε τίτλου ή χαρακτηρισμού, εξ ου δύναται να προκύψη σύγχυσις ως προς την ιδιότητά των ταύτην

Άρθρο 27

Περιορισμοί μετά την άρσιν της αναγνωρίσεως

Αι διατάξεις των άρθρων 19 και 26 του παρόντος εφαρμόζονται και μετά την αποδοχήν της Παραιτήσεως του Φιλανθρωπικού Σωματείου από της ειδικής αναγνωρίσεως ή μετά την άρσιν ταύτης

και εις ην έτι περίπτωσιν παραταθή κατά τα άρθρα 24 και 25 του παρόντος η ισχύς των άρθρων 20 έως 25 του παρόντος.

ΚΕΦΑΛΑΙΟΝ ΤΡΙΤΟΝ ΤΕΛΙΚΑΙ ΔΙΑΤΑΞΕΙΣ

Άρθρο 28

Αναμόρφωσις Καταστατικού

Τα Φιλανθρωπικά Σωματεία οφείλουν εντός έτους από της δημοσιεύσεως του παρόντος να προβούν εις αναπροσαρμογήν των καταστατικών των, συμφώνως προς τας διατάξεις του παρόντος.

2. Φιλανθρωπικά Σωματεία μη συμμορφούμενα προς την ανωτέρω διάταξιν και ανεξαρτήτως της ποινικής ευθύνης των μελών των Διοικήσεων αυτών κατά το άρθρον 36 του Ν.Δ. 795/71 διαλύονται δια δικαστικής αποφάσεως από της επομένης της εκπνοής της προθεσμίας της προηγουμένης παραγράφου.

3. Παρ' εκάστω Πρωτοδικείω τηρείται ειδικόν μητρώον Φιλανθρωπικών Σωματείων εις ο καταχωρούνται και τα κατά την δημοσίευσιν του παρόντος λειτουργούντα Φιλανθρωπικά Σωματεία.

4. Ωσαύτως, μητρώον Φιλανθρωπικών Σωματείων τηρείται παρ' εκάστη Νομαρχία και Περιφερειακή.

Διοικήσει, ως και παρά τω Υπουργείω Κοινωνικών Υπηρεσιών.

Άρθρο 29

Απογραφή

1. Τα κατά την δημοσίευσιν του παρόντος λειτουργούντα Φιλανθρωπικά Σωματεία ως και πάσης μορφής Ιδρύματα και Οργανισμοί Κοινωνικής Προστασίας υποχρεούνται όπως εντός εξαμήνου από της ισχύος του παρόντος υποβάλλουν εις την οικείαν Νομαρχίαν εις τριπλούν απογραφικόν δελτίον εμφαίνον τα στοιχεία της νομίμου συστάσεώς των και της εν γένει οικονομικής και περιουσιακής των καταστάσεως,

2. Μέλη των Διοικήσεων των εν τη προηγουμένη παραγράφω Σωματείων, Ιδρυμάτων και Οργανισμών μη υποβαλόντα το, κατά την διάταξιν της προηγουμένης παραγράφου, απογραφικόν δελτίον τιμωρούνται κατά τας διατάξεις του άρθρου 458 του Ποινικού Κώδικος.

Άρθρο 30

Απαλλαγαί

Αι υπό του άρθρου 6 του Ν. 3686/57 "περι ατελούς εισαγωγής ειδών γενικής καταναλώσεως κ.λ.π.", προβλεπόμεναι απαλλαγαί δεν παρέχονται εις Φιλανθρωπικά Σωματεία μη ειδικώς ανεγνωρισμένα κατά τας διατάξεις του παρόντος.

Άρθρο 31

Καταργούνται από της δημοσιεύσεως του παρόντος αι διατάξεις του Α.Ν. 2189/40 "περί των Σωματείων των ειδικώς ανεγνωρισμένων ως Φιλανθρωπικών υπό του Υπουργείου Κρατικής Υγιεινής και Αντιλήψεως", ως και πάσα ετέρα διάταξις αντικειμένη τω παρόντι.

Άρθρο 32

Πάντα τα λοιπά θέματα τα μη ειδικώς ρυθμιζόμενα υπό των διατάξεων του παρόντος ρυθμίζονται υπό των διατάξεων του Ν.Δ. 795/71 <<περί Σωματείων και Ενώσεων>>.

Άρθρο 33

Η ισχύς του παρόντος άρχεται από της δημοσιεύσεώς του εις την Εφημερίδα της κύβερνήσεως.

Εν Αθήναις τη 8 Φεβρουαρίου 1972

Εν Ονόματι του Βασιλέως

Ο ΑΝΤΙΒΑΣΙΛΕΥΣ

ΓΕΩΡΓΙΟΣ ΖΩΙΤΑΚΗΣ

Εθεωρήθη και ετέθη η μεγάλη του Κράτους σφραγίς.

Σημείωση:

Το ΝΔ 795/71 «Περί Σωματείων και Ενώσεων» στο

οποίο παραπέμπει το άρθρο 32 του ΝΔ 1111/72, για θέματα που δεν ρυθμίζονται από το ΝΔ 795/71, δεν ισχύει πλέον αφού καταργήθηκε με τις διατάξεις του άρθρου 1 παρ 1 εδ. α του ΝΔ 42/74 ΦΕΚ 247/74 και επαναφέρθηκαν σε ισχύ οι

διατάξεις του ΑΝ 2189/40 "Περί των Σωματείων των ειδικώς αναγνωρισμένων ως Φιλανθρωπικών υπό του Υπουργείου Κρατικής Υγιεινής και Αντιλήψεως".

ΠΙΣΩ

French: Associations philanthropiques

Ces associations sont régies par le décret-loi 1111/1972. Le principe de la spécialité leur est applicable au sens que ces associations doivent, conformément à leurs statuts, poursuivre le but exclusif prévu par ledit décret-loi (Art.1, § 1). Par conséquent, au sens de ladite loi, les associations qui ne s'occupent qu'accessoirement d'activités philanthropiques ne sont pas considérées comme philanthropiques (C. A. Athènes 2226/1973 : La tribune juridique 21, 1212). La loi distingue deux grandes catégories d'association:

– les associations non reconnues comme spécifiques;

– les associations reconnues comme spécifiques (Décret-loi 1111/1972, Art. 18).

Cette distinction a de l'importance en ce qui concerne les avantages particuliers (Art. 19) et les engagements ou obligations (Art. 21 et 22) dont bénéficient ou auxquels sont soumises les associations spécifiques. L'article 6 dudit décret-loi mérite une attention particulière. En vertu des dispositions dudit article, les associations philanthropiques sont tenues d'affecter leurs biens et de constituer une fondation conformément aux dispositions des articles 108 à 121 du code civil. Selon l'arrêt rendu par les sections réunies du Conseil d'Etat 2743/1973 (La tribune juridique 22, 97), ladite disposition limite l'exercice du droit d'association[369].

Les buts philanthropiques, selon l'article 1 § 1 du décret-loi 1111/1972, sont ceux "qui consistent en la prestation d'aide matérielle et morale à des personnes ou groupes de personnes étant en situation de besoin."[370]

[369] Sousi/Mayaud, p. 128, n. 16.

[370] Alfandari/Nardone, p. 246, n. 5130.

10.2. Law on Foundations

10.2.1. Art 109 of the Constitution

Άρθρο 109 (Art. 109 of the constitution)[371]

1. Δεν επιτρέπεται η μεταβολή του περιεχομένου ή των όρων διαθήκης, κωδικέλλου ή δωρεάς, ως προς τις διατάξεις τους υπέρ του Δημοσίου ή υπέρ κοινωφελούς σκοπού.
2. Κατ' εξαίρεση επιτρέπεται η επωφελέστερη αξιοποίηση ή διάθεση, για τον ίδιο ή άλλο κοινωφελή σκοπό, εκείνου που καταλείφθηκε ή δωρήθηκε, στην περιοχή που καθόρισε ο δωρητής ή ο διαθέτης ή στην ευρύτερή της περιφέρεια, όταν βεβαιωθεί με δικαστική α-πόφαση ότι η θέληση του διαθέτη ή του δωρητή δεν μπορεί να πραγματοποιηθεί, για οποιονδήποτε λόγο, καθόλου ή κατά το μεγαλύτερο μέρος του περιεχομένου της, καθώς και αν μπορεί να ικανοποιηθεί πληρέστερα με τη μεταβολή της εκμετάλλευσης, όπως νόμος ορίζει.
3. Νόμος ορίζει τα σχετικά με τη σύνταξη μητρώου κληροδοτημάτων γενικά και ανά περιφέρεια, την καταγραφή και ταξινόμηση των περιουσιακών τους στοιχείων,
τη διοίκηση και διαχείριση του κάθε κληροδοτήματος σύμφωνα με τη βούληση του διαθέτη ή δωρητή και κάθε άλλο συναφές ζήτημα.

Article 109 of the Constitution[372]:

1. Alteration of the contents or terms of a will, codicil or donation as to the provisions benefiting the State or a charitable cause is prohibited.

2. Exceptionally, a different use of the bequest can be made, under the condition that it is used for another charitable purpose and that it is used in the same geographic place or greater area. The variation has to be certified by a court decision, stating that the will of the founder can not or only insufficiently be fulfilled by the original use but better satisfied by the change of the use.

3. A law defines the compilation of a register of the bequest both in general and by region. It has to keep the information on the property contained in the bequest as well as on the administration and management of its assets according to the will of the donor.

10.2.2. Civil Code

Art. 61 Civil Code

[371] http://www.lawnet.gr/lawnet/Nomothesia/sintagma/constitution6g.asp, 14 February 2005.

[372] http://www.ministryofjustice.gr/eu2003/constitution.pdf, 11 February 2005.

Art. 61 - Personnes morales en général[373]

Une union de personnes, en vue de poursuivre un but déterminé, de même qu'un ensemble de biens affectés au service d'un but déterminé peuvent acquérir la personnalité juridique, si les conditions inscrites dans la loi sont observées.

Missing: Art. 108-122 Civil Code

10.3. Law on NPO

There could no law on NPO be found.

10.4. Law on NGO

There could no law on NGO be found.

10.5. Law on other legal forms

There could no law on other legal forms be found.

10.6. Other laws

10.6.1. Decree Law 3843/58

Art. 4 § 5 Decree Law 3843/58 modified by Law 2065/92:

Lorsqu'il s'agit des personnes morales grecques (c'est-à-dire dont le siège est en Grèce) de droit public ou privé, à but non lucratif, le revenu imposable est celui provenant de la location d'immeubles, de terrains ou (provenant) des valeurs mobilières (dits de classe A en jargon fiscal). Tous les autres revenus de ces personnes morales sont exclus d'imposition ainsi que les recettes de toute nature acquises dans le cadre de la réalisation de leurs buts[374].

Art. 6 C Decree Law 3843/58 modified by Law 2065/92:

Sont exonérées d'impôt pour leurs revenus provenant de la location de terrains ou d'immeubles les personnes morales grecques dont les buts sont qualifiés d'intérêt général.

A titre exceptionnel, les personnes morales grecques à but qualifié d'intérêt général sont également exonérées d'impôts pour les revenus provenant des valeurs mobilières".

La notion de but d'intérêt général" est très large et "englobe tout but qui n'est pas strictement d'intérêt privé et concerne les intérêts de larges groupes de personnes, en un mot du public"[375].

11. Ireland

11.1. Law on Associations

No information available.

11.2. Law on Foundations

No information available.

11.3. Law on NPO

No information available.

11.4. Law on NGO

No information available.

11.5. Law on other legal forms

No information available.

11.6. Other laws

No information available.

12. Italy

12.1. Law on Associations

Associations are governed by Art. 12 – 35 Civil Code "Codice Civile (CC)"[376]

Art. 12 – 19 and 27 - 35 CC see below, Law on Foundations 12.2 on page 338.

[373] Sousi/Mayaud, p. 149.

[374] Alfandari/Nardone, p. 243, n. 5120.

[375] Alfandari/Nardone, p. 243, n. 5130.

[376] http://www.codicisimone.it/codici/index0.htm, 17 November 2004.

Art. 20. Convocazione dell'assemblea delle associazioni

L'assemblea

> Assemblea: è l'organo deliberativo delle associazioni, formato dall'insieme di tutti gli associati chiamati a decidere sulla disciplina e sull'attività dell'ente

delle associazioni deve essere convocata dagli amministratori una volta l'anno per l'approvazione del bilancio.

L'assemblea deve essere inoltre convocata quando se ne ravvisa la necessità o quando ne è fatta richiesta motivata da almeno un decimo degli associati. In questo ultimo caso, se gli amministratori non vi provvedono, la convocazione può essere ordinata dal presidente del tribunale [disp. att. 8] (1).

Art. 21. Deliberazioni dell'assemblea

Le deliberazioni dell'assemblea sono prese a maggioranza di voti e con la presenza di almeno la metà degli associati. In seconda convocazione la deliberazione è valida qualunque sia il numero degli intervenuti (1). Nelle deliberazioni di approvazione del bilancio e in quelle che riguardano la loro responsabilità [18, 22] gli amministratori non hanno voto.

Per modificare l'atto costitutivo e lo statuto, se in essi non è altrimenti disposto, occorrono la presenza di almeno tre quarti degli associati e il voto favorevole della maggioranza dei presenti [16].

Per deliberare lo scioglimento dell'associazione e la devoluzione del patrimonio [31 ss.] occorre il voto favorevole di almeno tre quarti degli associati [disp. att. 11] (2).

Art. 22. Azioni di responsabilità contro gli amministratori

Le azioni di responsabilità contro gli amministratori delle associazioni per fatti da loro compiuti sono deliberate dall'assemblea [21] e sono esercitate dai nuovi amministratori o dai liquidatori.

Art. 23. Annullamento e sospensione delle deliberazioni

Le deliberazioni dell'assemblea contrarie alla legge, all'atto costitutivo o allo statuto possono essere annullate su istanza degli organi dell'ente, di qualunque associato o del pubblico ministero (1).

L'annullamento della deliberazione non pregiudica i diritti acquistati dai terzi di buona fede in base ad atti compiuti in esecuzione della deliberazione medesima (2).

Il presidente del tribunale o il giudice istruttore, sentiti gli amministratori dell'associazione, può sospendere, su istanza di colui che ha proposto l'impugnazione, l'esecuzione della deliberazione impugnata, quando sussistono gravi motivi (3). Il decreto di sospensione deve essere motivato ed è notificato agli amministratori.

L'esecuzione delle deliberazioni contrarie all'ordine pubblico o al buon costume può essere sospesa anche dall'autorità governativa [disp. att. 9] (4).

Art. 24. Recesso ed esclusione degli associati

La qualità di associato non è trasmissibile, salvo che la trasmissione sia consentita dall'atto costitutivo o dallo statuto (1).

L'associato può sempre recedere dall'associazione se non ha assunto l'obbligo di farne parte per un tempo determinato. La dichiarazione di recesso deve essere comunicata per iscritto agli amministratori e ha effetto con lo scadere dell'anno in corso, purché sia fatta almeno tre mesi prima [2285] (2).

L'esclusione d'un associato non può essere deliberata dall'assemblea che per gravi motivi; l'associato può ricorrere all'autorità giudiziaria entro sei mesi dal giorno in cui gli è stata notificata la deliberazione [2286] (3).

Gli associati, che abbiano receduto o siano stati esclusi o che comunque abbiano cessato di appartenere all'associazione, non possono ripetere i contributi versati, né hanno alcun diritto sul patrimonio dell'associazione [37].

12.2. Law on Foundations

Foundations are governed by Art. 12 – 35 Civil Code "Codice Civile (CC)[377].

Art. 12. Persone giuridiche private

[377] http://www.codicisimone.it/codici/index0.htm, 17 November 2004.

Le associazioni, le fondazioni e le altre istituzioni di carattere privato acquistano la personalità giuridica mediante il riconoscimento

> Riconoscimento: in passato si trattava di un atto amministrativo costitutivo (con esso, cioè, l'ente veniva ad esistenza) e di natura discrezionale con il quale l'autorità pubblica conferiva personalità giuridica all'ente. Era concesso con decreto del Presidente della Repubblica o dal prefetto. A seguito dell'entrata in vigore del d.P.R. 361/2000, il riconoscimento della persona giuridica coincide con l'iscrizione della stessa nell'apposito registro; l'iscrizione è disposta dal Presidente della Regione per le persone giuridiche private che operano nelle materie delegate ex d.P.R. 616/1977 e le cui finalità si esauriscono nell'ambito di una sola Regione, ovvero dal prefetto in tutti gli altri casi.

concesso con decreto del Presidente della Repubblica.

Per determinate categorie di enti che esercitano la loro attività nell'ambito della provincia, il Governo può delegare ai prefetti la facoltà di riconoscerli con loro decreto (1).

> (1) Art. abrogato ex art. 11, lett. a), d.P.R. 10-2-2000, n. 361 (Regolamento recante norme per la semplificazione dei procedimenti di riconoscimento di persone giuridiche private e di approvazione delle modifiche dell'atto costitutivo e dello statuto).

Ai sensi del citato decreto, il riconoscimento non è più concesso con decreto del Presidente della Repubblica. La competenza in materia è ora attribuita alla Regione per le persone giuridiche private che operano nelle materie delegate ex d.P.R. 616/1977 e le cui finalità si esauriscono nell'ambito di una sola Regione; è attribuita al Prefetto in tutti gli altri casi. Corrispondentemente, è stato soppresso il registro delle persone giuridiche tenuto dal tribunale e sono istituiti un registro regionale ed uno prefettizio. La domanda per il riconoscimento, sottoscritta dal fondatore o da coloro cui è attribuita la rappresentanza dell'ente, viene presentata — salvo quanto previsto dagli artt. 7 e 9 del decreto — alla prefettura (ora Ufficio territoriale del Governo) nella cui provincia è stabilita la sede dell'ente. Ove siano soddisfatte le condizioni previste da leggi e regolamenti per la costituzione dell'ente, lo scopo sia possibile e lecito e il patrimonio (la cui consistenza deve essere comprovata da idonea documentazione) risulti adeguato alla realizzazione dello scopo, l'autorità competente provvede all'iscrizione.

L'iscrizione nel Registro ha effetto costitutivo; ai sensi dell'art. 1 del Regolamento, le associazioni, le fondazioni e le altre istituzioni di carattere privato acquistano la personalità giuridica «mediante il riconoscimento determinato dall'iscrizione nel Registro delle persone giuridiche». In precedenza, invece, l'iscrizione seguiva temporalmente la concessione del riconoscimento.

Con il riconoscimento, la persona giuridica acquista una piena capacità giuridica [v. 1] simile a quella delle persone fisiche; tale capacità incontra però dei limiti di ordine naturale relativamente a tutti quei rapporti che presuppongono l'esistenza di una persona fisica. Così la persona giuridica non può contrarre matrimonio, non può redigere testamento, non può riconoscere un figlio naturale etc., mentre gode di una piena capacità relativamente agli atti di natura patrimoniale.

Art. 14. Atto costitutivo.

Le associazioni

> Associazione: è il complesso di persone fisiche per la realizzazione di uno scopo sociale di natura non prettamente economica (es.: sportivo, culturale, politico). In essa predomina l'elemento personale.)

e le fondazioni (Fondazione: il complesso organizzato di beni destinati da uno o più soggetti (cd. fondatori) per la realizzazione di uno scopo generalmente altruistico (si pensi al complesso di beni lasciato da una persona per istituire un ospedale) In essa predomina l'elemento patrimoniale.

devono essere costituite con atto pubblico [2699] (1) (2) [disp. att. 3].

La fondazione può essere disposta anche con testamento.

Art. 15. Revoca dell'atto costitutivo della fondazione. — L'atto di fondazione può essere revocato (1) dal fondatore fino a quando non sia intervenuto il riconoscimento ovvero il fondatore non abbia fatto iniziare l'attività dell'opera da lui disposta [555, 2331].

La facoltà di revoca non si trasmette agli eredi.

Art. 16. Atto costitutivo e statuto. Modificazioni.

L'atto costitutivo [14] e lo statuto devono contenere la denominazione dell'ente, l'indicazione dello scopo [27] (1),

> (1) Scopo: è il fine cui è rivolta tutta l'attività della persona giuridica. Lo (—) dev'essere determinato (o eventualmente determinabile), lecito (cioè non contrario a norme imperative, all'ordine pubblico ed al buon costume) e non

lucrativo (cioè non finalizzato alla divisione degli utili tra gli associati).

Mentre nelle associazioni lo scopo può non essere altruistico e, quindi, può essere rivolto solo al vantaggio degli associati (scopo interno: si pensi ad una associazione di amanti della bicicletta che organizza gite e manifestazioni per i soli associati), nelle fondazioni lo scopo deve essere necessariamente di pubblica utilità, ossia a vantaggio di soggetti estranei alla fondazione stessa (scopo esterno: si pensi alla fondazione per la costituzione di un ospedale o di un centro di accoglienza per i bambini abbandonati).

del patrimonio e della sede, nonché le norme sull'ordinamento e sull'amministrazione [25, 1387]. Devono anche determinare, quando trattasi di associazioni, i diritti e gli obblighi degli associati e le condizioni della loro ammissione [24]; e, quando trattasi di fondazioni, i criteri e le modalità di erogazione delle rendite (2).

(2) Gli elementi elencati in questo comma devono essere indicati nell'atto costitutivo o nello statuto al fine di permettere la valutazione da parte dell'autorità competente sulla opportunità o meno di disporre l'iscrizione dell'ente nell'apposito registro

L'atto costitutivo e lo statuto possono inoltre contenere le norme relative all'estinzione dell'ente (3) e alla devoluzione del patrimonio [213, 31, 32], e, per le fondazioni, anche quelle relative alla loro trasformazione [28].

Le modificazioni dell'atto costitutivo e dello statuto devono essere approvate dall'autorità governativa nelle forme indicate nell'articolo 12 (4).

Art 17. [Acquisto di immobili e accettazione di donazioni, eredità e legati

La persona giuridica non può acquistare beni immobili, né accettare donazioni o eredità, né conseguire legati senza l'autorizzazione governativa.

Senza questa autorizzazione, l'acquisto e l'accettazione non hanno effetto] (1) (2).

Art. 18. Responsabilità degli amministratori

Gli amministratori

Amministratore: è il tipico organo esecutivo degli enti riconosciuti e non (associazioni, fondazioni e società) con funzioni di gestione, amministrazione e generalmente di rappresentanza. La competenza dell'(—) è stabilita dallo statuto e il contenuto dei suoi poteri è sottoposto ad un particolare regime pubblicitario.

sono responsabili verso l'ente secondo le norme del mandato (1). È però esente da responsabilità quello degli amministratori il quale non abbia partecipato all'atto che ha causato il danno, salvo il caso in cui, essendo a cognizione che l'atto si stava per compiere, egli non abbia fatto constare il proprio dissenso.

Art. 19. Limitazioni del potere di rappresentanza

Le limitazioni del potere di rappresentanza, che non risultano dal registro indicato nell'articolo 33 (1), non possono essere opposte ai terzi, salvo che si provi che essi ne erano a conoscenza (2).

Art. 25. Controllo sull'amministrazione delle fondazioni.

L'autorità governativa (1) esercita il controllo e la vigilanza sull'amministrazione delle fondazioni; provvede alla nomina e alla sostituzione degli amministratori o dei rappresentanti, quando le disposizioni contenute nell'atto di fondazione non possono attuarsi; annulla, sentiti gli amministratori, con provvedimento definitivo, le deliberazioni contrarie a norme imperative, all'atto di fondazione, all'ordine pubblico o al buon costume [234]; può sciogliere l'amministrazione e nominare un commissario straordinario, qualora gli amministratori non agiscano in conformità dello statuto o dello scopo della fondazione o della legge.

L'annullamento della deliberazione [23] non pregiudica i diritti acquistati dai terzi di buona fede in base ad atti compiuti in esecuzione della deliberazione medesima [1445].

Le azioni contro gli amministratori per fatti riguardanti la loro responsabilità [22] devono essere autorizzate dall'autorità governativa (1) e sono esercitate dal commissario straordinario, dai liquidatori o dai nuovi amministratori.

Art. 26. Coordinamento di attività e unificazione di amministrazione

L'autorità governativa (1) può disporre il coordinamento dell'attività di più fondazioni ovvero l'unificazione della loro amministrazione, rispettando, per quanto è possibile, la volontà del fondatore (2).

Art. 27. Estinzione della persona giuridica

Oltre che per le cause previste nell'atto costitutivo e nello statuto [16], la persona giuridica si estingue quando lo scopo è stato raggiunto o è divenuto impossibile [28, 2272 n. 2, 2484, n. 2] (1).

Le associazioni si estinguono inoltre quando tutti gli associati sono venuti a mancare [2272 n. 4] (2).

[L'estinzione è dichiarata dalla autorità governativa, su istanza di qualunque interessato o anche di ufficio] (3)

Art. 28. Trasformazione delle fondazioni

Quando lo scopo è esaurito o divenuto impossibile o di scarsa utilità, o il patrimonio è divenuto insufficiente, l'autorità governativa (1), anziché dichiarare estinta la fondazione, può provvedere alla sua trasformazione, allontanandosi il meno possibile dalla volontà del fondatore [16, 27] (2).

La trasformazione non è ammessa quando i fatti che vi darebbero luogo sono considerati nell'atto di fondazione come causa di estinzione della persona giuridica e di devoluzione dei beni a terze persone [31].

Le disposizioni del primo comma di questo articolo e dell'articolo 26 non si applicano alle fondazioni destinate a vantaggio soltanto di una o più famiglie determinate (3).

Art. 29. Divieto di nuove operazioni

Gli amministratori non possono compiere nuove operazioni, appena è stato loro comunicato il provvedimento che dichiara l'estinzione della persona giuridica o il provvedimento con cui l'autorità a norma di legge, ha ordinato lo scioglimento dell'associazione, o appena è stata adottata dall'assemblea la deliberazione di scioglimento dell'associazione medesima [21]. Qualora trasgrediscano a questo divieto, assumono responsabilità personale e solidale [18] (1).

Art. 30. Liquidazione

Dichiarata l'estinzione della persona giuridica o disposto lo scioglimento dell'associazione, si procede alla liquidazione del patrimonio secondo le norme di attuazione del codice [31] (1).

Art. 31. Devoluzione dei beni

I beni della persona giuridica, che restano dopo esaurita la liquidazione [30], sono devoluti in conformità dell'atto costitutivo o dello statuto [16; disp. att. 15] (1).

Qualora questi non dispongano, se trattasi di fondazione, provvede l'autorità governativa (2), attribuendo i beni ad altri enti che hanno fini analoghi [32]; se trattasi di associazione, si osservano le deliberazioni dell'assemblea che ha stabilito lo scioglimento e, quando anche queste mancano, provvede nello stesso modo l'autorità governativa (2).

I creditori che durante la liquidazione non hanno fatto valere il loro credito possono chiedere il pagamento a coloro ai quali i beni sono stati devoluti, entro l'anno (3) dalla chiusura della liquidazione, in proporzione e nei limiti di ciò che hanno ricevuto (4).

Art. 32. Devoluzione dei beni con destinazione particolare

Nel caso di trasformazione o di scioglimento di un ente al quale sono stati donati o lasciati beni con destinazione a scopo diverso da quello proprio dell'ente, l'autorità governativa (1) devolve tali beni, con lo stesso onere, ad altre persone giuridiche che hanno fini analoghi.

Art 33. [Registrazione delle persone giuridiche.

In ogni provincia è istituito un pubblico registro delle persone giuridiche.

Nel registro devono indicarsi la data dell'atto costitutivo e quella del decreto di riconoscimento, la denominazione, lo scopo, il patrimonio, la durata, qualora sia stata determinata, la sede della persona giuridica e il cognome e il nome degli amministratori con la menzione di quelli ai quali è attribuita la rappresentanza.

La registrazione può essere disposta anche d'ufficio.

Gli amministratori di un'associazione o di una fondazione non registrata, benché riconosciuta, rispondono personalmente e solidalmente, insieme con la persona giuridica, delle obbligazioni assunte] (1).

Art. 34. [Registrazione di atti

Nel registro devono iscriversi anche le modificazioni dell'atto costitutivo e dello statuto, dopo che sono state approvate dall'autorità governativa, il trasferimento della sede e l'istituzione di sedi secondarie, la sostituzione degli amministratori con indicazione di quelli ai quali spetta la rappresentanza, le deliberazioni di scioglimento i provvedimenti che ordinano lo scioglimento o dichiarano l'estinzione, il cognome e il nome dei liquidatori.

Se l'iscrizione non ha avuto luogo, i fatti indicati non possono essere opposti ai terzi, a meno che si provi che questi ne erano a conoscenza] (1).

Art. 35. Disposizione penale. (1)

Gli amministratori e i liquidatori che non richiedono le iscrizioni prescritte [dagli articoli 33 e 34, nel termine e secondo le modalità stabiliti dalle norme di attuazione del codice] (2), sono puniti con la sanzione amministrativa (1) da euro 10 a euro 516 (3).

12.3. Law on NPO

There is no specific law for NPO in Italy.

12.4. Law on NGO

There is no specific law on NGO in Italy. But the Ministry of Foreign Affairs recognises organisations that meet the following requirements as NGO for Development[378]:

Il riconoscimento di idoneità alle organizzazioni non governative può essere dato per uno o più settori di intervento sopra indicati, a condizione che le medesime:

- risultino costituite ai sensi degli articoli 14, 36 e 39 del codice civile;
- abbiano come fine istituzionale quello di svolgere attività di cooperazione allo sviluppo, in favore delle popolazioni del terzo mondo;
- non perseguano finalità di lucro e prevedano l'obbligo di destinare ogni provento, anche derivante da attività commerciali accessorie o da altre forme di autofinanziamento, per i fini istituzionali di cui sopra;
- non abbiano rapporti di dipendenza da enti con finalità di lucro, nè siano collegate in alcun modo agli interessi di enti pubblici o privati, italiani o stranieri, aventi scopo di lucro;
- diano adeguate garanzie in ordine alla realizzazione delle attività previste, disponendo anche delle strutture e del personale qualificato necessari;
- documentino esperienza operativa e capacità organizzativa di almeno tre anni, in rapporto ai Paesi in via di sviluppo, nel settore o nei settori per cui si richiede il riconoscimento di idoneità;
- accettino controlli periodici all'uopo stabiliti dalla Direzione generale per la cooperazione allo sviluppo anche ai fini del mantenimento della qualifica;
- presentino i bilanci analitici relativi all'ultimo triennio e documentino la tenuta della contabilità;
- si obblighino alla presentazione di una relazione annuale sullo stato di avanzamento dei programmi in corso.

12.5. Law on other legal forms

12.5.1. Law on Social utility non-profit organisations (ONLUS)

The Social utility non-profit organisations "organizzazioni non lucrative di utilità sociale (ONLUS)" are goverend by the Decree Law 460/1997 "Decreto Legislativo 4 dicembre 1997, n. 460 Riordino della disciplina tributaria degli enti non commerciali e delle organizzazioni non lucrative di utilità sociale"[379].

Articolo 10. Organizzazioni non lucrative di utilità sociale

1. Sono organizzazioni non lucrative di utilità sociale (ONLUS) le associazioni, i comitati, le fondazioni, le società cooperative e gli altri enti di carattere privato, con o senza personalità giuridica, i cui statuti o atti costitutivi, redatti nella forma dell'atto pubblico o della scrittura privata autenticata o registrata, prevedono espressamente:

[378] http://www.welfare.gov.it/EaChannel/MenuIstituzionale/Sociale/volontariato+italiano/norme/leggi/19870226L.+49+26+02+87.htm, 16 November 2004.

[379] http://www.agenziaperleonlus.it/intranet/Agenzia-ON/Normativa-/index.htm, 18 November 2004.

a) lo svolgimento di attività in uno o più dei seguenti settori:

1) assistenza sociale e socio-sanitaria;

2) assistenza sanitaria;

3) beneficenza;

4) istruzione;

5) formazione;

6) sport dilettantistico;

7) tutela, promozione e valorizzazione delle cose d'interesse artistico e storico di cui alla legge 1° giugno 1939, n. 1089, ivi comprese le biblioteche e i beni di cui al decreto del Presidente della Repubblica 30 settembre 1963, n. 1409;

8) tutela e valorizzazione della natura e dell'ambiente, con esclusione dell'attività, esercitata abitualmente, di raccolta e riciclaggio dei rifiuti urbani, speciali e pericolosi di cui all'articolo 7 del decreto legislativo 5 febbraio 1997, n. 22;

9) promozione della cultura e dell'arte;

10) tutela dei diritti civili;

11) ricerca scientifica di particolare interesse sociale svolta direttamente da fondazioni ovvero da esse affidata ad università, enti di ricerca ed altre fondazioni che la svolgono direttamente, in ambiti e secondo modalità da definire con apposito regolamento governativo emanato ai sensi dell'articolo 17 della legge 23 agosto 1988, n. 400;

b) l'esclusivo perseguimento di finalità di solidarietà sociale;

c) il divieto di svolgere attività diverse da quelle menzionate alla lettera a) ad eccezione di quelle ad esse direttamente connesse;

d) il divieto di distribuire, anche in modo indiretto, utili e avanzi di gestione nonché fondi, riserve o capitale durante la vita dell'organizzazione, a meno che la destinazione o la distribuzione non siano imposte per legge o siano effettuate a favore di altre ONLUS che per legge, statuto o regolamento fanno parte della medesima ed unitaria struttura;

e) l'obbligo di impiegare gli utili o gli avanzi di gestione per la realizzazione delle attività istituzionali e di quelle ad esse direttamente connesse;

f) l'obbligo di devolvere il patrimonio dell'organizzazione, in caso di suo scioglimento per qualunque causa, ad altre organizzazioni non lucrative di utilità sociale o a fini di pubblica utilità, sentito l'organismo di controllo di cui all'articolo 3, comma 190, della legge 23 dicembre 1996, n. 662, salvo diversa destinazione imposta dalla legge;

g) l'obbligo di redigere il bilancio o rendiconto annuale;

h) disciplina uniforme del rapporto associativo e delle modalità associative volte a garantire l'effettività del rapporto medesimo, escludendo espressamente la temporaneità della partecipazione alla vita associativa e prevedendo per gli associati o partecipanti maggiori d'età il diritto di voto per l'approvazione e le modificazioni dello statuto e dei regolamenti e per la nomina degli organi direttivi dell'associazione;

i) l'uso, nella denominazione ed in qualsivoglia segno distintivo o comunicazione rivolta al pubblico, della locuzione «organizzazione non lucrativa di utilità sociale» o dell'acronimo «ONLUS».

2. Si intende che vengono perseguite finalità di solidarietà sociale quando le cessioni di beni e le prestazioni di servizi relative alle attività statutarie nei settori dell'assistenza sanitaria, dell'istruzione, della formazione, dello sport dilettantistico, della promozione della cultura e dell'arte e della tutela dei diritti civili non sono rese nei confronti di soci, associati o partecipanti, nonché degli altri soggetti indicati alla lettera a) del comma 6, ma dirette ad arrecare benefici a:

a) persone svantaggiate in ragione di condizioni fisiche, psichiche, economiche, sociali o familiari;

b) componenti collettività estere, limitatamente agli aiuti umanitari.

3. Le finalità di solidarietà sociale s'intendono realizzate anche quando tra i beneficiari delle attività statutarie dell'organizzazione vi siano i propri soci, associati o partecipanti o gli altri soggetti indicati alla lettera a) del comma 6, se costoro si trovano nelle condizioni di svantaggio di cui alla lettera a) del comma 2.

4. A prescindere dalle condizioni previste ai commi 2 e 3, si considerano comunque inerenti a finalità di solidarietà sociale le attività statutarie istituzionali svolte nei settori della assistenza sociale e sociosanitaria, della beneficenza, della tutela, promozione e valorizzazione delle cose d'interesse artistico e storico di cui alla legge 1° giugno 1939, n. 1089, ivi comprese le biblioteche e i beni di cui al decreto del Presidente della Repubblica 30 settembre 1963, n. 1409, della tutela e valorizzazione della natura e dell'ambiente con esclusione dell'attività, esercitata abitualmente, di raccolta e riciclaggio dei rifiuti urbani, speciali e pericolosi di cui all'articolo 7 del decreto legislativo 5 febbraio 1997, n. 22, della ricerca scientifica di particolare interesse sociale svolta direttamente da fondazioni, ovvero da esse affidate ad università, enti di ricerca ed altre fondazioni che la svolgono direttamente, in ambiti e secondo modalità da definire con apposito regolamento governativo emanato ai sensi dell'articolo 17 della legge 23 agosto 1988, n. 400, nonché le attività di promozione della cultura e dell'arte per le quali sono riconosciuti apporti economici da parte dell'amministrazione centrale dello Stato.

5. Si considerano direttamente connesse a quelle istituzionali le attività statutarie di assistenza sanitaria, istruzione, formazione, sport dilettantistico, promozione della cultura e dell'arte e tutela dei diritti civili, di cui ai numeri 2), 4), 5), 6), 9) e 10) del comma 1, lettera a), svolte in assenza delle condizioni previste ai commi 2 e 3, nonché le attività accessorie per natura a quelle statutarie istituzionali, in quanto integrative delle stesse. L'esercizio delle attività connesse è consentito a condizione che, in ciascun esercizio e nell'ambito di ciascuno dei settori elencati alla lettera a) del comma 1, le stesse non siano prevalenti rispetto a quelle istituzionali e che i relativi proventi non superino il 66 per cento delle spese complessive dell'organizzazione.

6. Si considerano in ogni caso distribuzione indiretta di utili o di avanzi di gestione:

a) le cessioni di beni e le prestazioni di servizi a soci, associati o partecipanti, ai fondatori, ai componenti gli organi amministrativi e di controllo, a coloro che a qualsiasi titolo operino per l'organizzazione o ne facciano parte, ai soggetti che effettuano erogazioni liberali a favore dell'organizzazione, ai loro parenti entro il terzo grado ed ai loro affini entro il secondo grado, nonché alle società da questi direttamente o indirettamente controllate o collegate, effettuate a condizioni più favorevoli in ragione della loro qualità. Sono fatti salvi, nel caso delle attività svolte nei settori di cui ai numeri 7) e 8) della lettera a) del comma 1, i vantaggi accordati a soci, associati o partecipanti ed ai soggetti che effettuano erogazioni liberali, ed ai loro familiari, aventi significato puramente onorifico e valore economico modico;

b) l'acquisto di beni o servizi per corrispettivi che, senza valide ragioni economiche, siano superiori al loro valore normale;

c) la corresponsione ai componenti gli organi amministrativi e di controllo di emolumenti individuali annui superiori al compenso massimo previsto dal decreto del Presidente della Repubblica 10 ottobre 1994, n. 645, e dal decreto-legge 21 giugno 1995, n. 239, convertito dalla legge 3 agosto 1995, n. 336, e successive modificazioni e integrazioni, per il presidente del collegio sindacale delle società per azioni;

d) la corresponsione a soggetti diversi dalle banche e dagli intermediari finanziari autorizzati, di interessi passivi, in dipendenza di prestiti di ogni specie, superiori di 4 punti al tasso ufficiale di sconto;

e) la corresponsione ai lavoratori dipendenti di salari o stipendi superiori del 20 per cento rispetto a quelli previsti dai contratti collettivi di lavoro per le medesime qualifiche.

7. Le disposizioni di cui alla lettera h) del comma 1 non si applicano alle fondazioni, e quelle di cui alle lettere h) ed i) del medesimo comma 1 non si applicano agli enti riconosciuti dalle confessioni religiose con le quali lo Stato ha stipulato patti, accordi o intese.

8. Sono in ogni caso considerati ONLUS, nel rispetto della loro struttura e delle loro finalità, gli organismi di volontariato di cui alla legge 11 agosto 1991, n. 266, iscritti nei registri istituiti dalle regioni e dalle province autonome di Trento e di Bolzano, le organizzazioni non governative riconosciute idonee ai sensi della legge 26 febbraio 1987, n. 49, e le cooperative sociali di cui alla legge 8 novembre 1991, n. 381 . Sono fatte salve le previsioni di maggior favore relative agli organismi di volontariato, alle organizzazioni non governative e alle cooperative sociali di cui alla legge 8 novembre 1991, n. 381, nonché i consorzi di cui all'articolo 8 della predetta legge n. 381 del 1991 che abbiano la base sociale formata per il cento per cento da cooperative sociali. Sono fatte salve le previsioni di maggior favore relative agli organismi di volontariato, alle organizzazioni non governative e alle cooperative sociali di cui, rispettivamente, alle citate leggi n. 266 del 1991, n. 49 del 1987 e n. 381 del 1991.

9. Gli enti ecclesiastici delle confessioni religiose con le quali lo Stato ha stipulato patti, accordi o intese e le associazioni di promozione sociale ricomprese tra gli enti di cui all'articolo 3, comma 6, lettera e), della legge 25 agosto 1991, n. 287, le cui finalità assistenziali siano riconosciute dal Ministero dell'interno, sono considerati ONLUS limitatamente all'esercizio delle attività elencate alla lettera a) del comma 1; fatta eccezione per la prescrizione di cui alla lettera c) del comma 1, agli stessi enti e associazioni si applicano le disposizioni anche agevolative del presente decreto, a condizione che per tali attività siano tenute separatamente le scritture contabili previste all'articolo 20-bis del decreto del Presidente delle Repubblica 29 settembre 1973, n. 600, introdotto dall'articolo 25, comma 1.

10. Non si considerano in ogni caso ONLUS gli enti pubblici, le società commerciali diverse da quelle cooperative, gli enti conferenti di cui alla legge 30 luglio 1990, n. 218, i partiti e i movimenti politici, le organizzazioni sindacali, le associazioni di datori di lavoro e le associazioni di categoria.

Articolo 11. Anagrafe delle ONLUS e decadenza dalle agevolazioni

1. E' istituita presso il Ministero delle finanze l'anagrafe unica delle ONLUS. Fatte salve le disposizioni contemplate nel regolamento di attuazione dell'articolo 8 della legge 29 dicembre 1993, n. 580, in materia di istituzione del registro delle imprese, approvato con il D.P.R. 7 dicembre 1995, n. 581, i soggetti che intraprendono l'esercizio delle attività previste all'articolo 10, ne danno comunicazione entro trenta giorni alla direzione regionale delle entrate del Ministero delle finanze nel cui ambito territoriale si trova il loro domicilio fiscale, in conformità ad apposito modello approvato con decreto del Ministro delle finanze. La predetta comunicazione è effettuata entro trenta giorni dalla data di entrata in vigore del presente decreto da parte dei soggetti che, alla predetta data, già svolgono le attività previste all'articolo 10. Alla medesima direzione deve essere altresì comunicata ogni successiva modifica che comporti la perdita della qualifica di ONLUS (35/a).

2. L'effettuazione delle comunicazioni di cui al comma 1 è condizione necessaria per beneficiare delle agevolazioni previste dal presente decreto.

3. Con uno o più decreti del Ministro delle finanze da emanarsi, entro sei mesi dalla data di entrata in vigore del presente decreto, ai sensi dell'articolo 17, comma 3, della legge 23 agosto 1988, n. 400, sono stabilite le modalità di esercizio del controllo relativo alla sussistenza dei requisiti formali per l'uso della denominazione di ONLUS, nonché i casi di decadenza totale o parziale dalle agevolazioni previste dal presente decreto e ogni altra disposizione necessaria per l'attuazione dello stesso.

12.5.2. Law on voluntary organisations

Voluntary organizations are governed by the Law 266/1991 "Legge 11 agosto 1991, n. 266 Legge-quadro sul volontariato (Pubblicata in G.U. 22 agosto 1991, n. 196)"[380].

Art.1. Finalità e oggetto della legge.

1. La Repubblica italiana riconosce il valore sociale e la funzione dell'attività di volontariato come espressione di partecipazione, solidarietà e pluralismo, ne promuove lo sviluppo salvaguardandone l'autonomia e ne favorisce l'apporto originale per il conseguimento delle finalità di carattere sociale, civile e culturale individuate dallo Stato, dalle regioni, dalle province autonome di Trento e di Bolzano e dagli enti locali.

[380] http://www.fondazionepromozionesociale.it/ L266_91.html, 14 June 2005.

2. La presente legge stabilisce i principi cui le regioni e le province autonome devono attenersi nel disciplinare i rapporti fra le istituzioni pubbliche e le organizzazioni di volontariato nonché i criteri cui debbono uniformarsi le amministrazioni statali e gli enti locali nei medesimi rapporti.

Art 2. Attività di volontariato.

1. Ai fini della presente legge per attività di volontariato deve intendersi quella prestata in modo personale, spontaneo e gratuito, tramite l'organizzazione di cui il volontario fa parte, senza fini di lucro anche indiretto ed esclusivamente per fini di solidarietà.

2. L'attività del volontario non può essere retribuita in alcun modo nemmeno dal beneficiario. Al volontario possono essere soltanto rimborsate dall'organizzazione di appartenenza le spese effettivamente sostenute per l'attività prestata, entro limiti preventivamente stabiliti dalle organizzazioni stesse.

3. La qualità di volontario è incompatibile con qualsiasi forma di rapporto di lavoro subordinato o autonomo e con ogni altro rapporto di contenuto patrimoniale con l'organizzazione di cui fa parte.

Art. 3. Organizzazioni di volontariato.

1. E' considerato organizzazione di volontariato ogni organismo liberamente costituito al fine di svolgere l'attività di cui all'articolo 2, che si avvalga in modo determinante e prevalente delle prestazioni personali, volontarie e gratuite dei propri aderenti.

2. Le organizzazioni di volontariato possono assumere la forma giuridica che ritengono più adeguata al perseguimento dei loro fini, salvo il limite di compatibilità con lo scopo solidaristico.

3. Negli accordi degli aderenti, nell'atto costitutivo o nello statuto, oltre a quanto disposto dal codice civile per le diverse forme giuridiche che l'organizzazione assume, devono essere espressamente previsti l'assenza di fini di lucro, la democraticità della struttura, l'elettività e la gratuità delle cariche associative nonché la gratuità delle prestazioni fornite dagli aderenti, i criteri di ammissione e di esclusione di questi ultimi, i loro obblighi e diritti. Devono essere altresì stabiliti l'obbligo di formazione del bilancio, dal quale devono risultare i beni, i contributi o i lasciti ricevuti, nonché le modalità di approvazione dello stesso da parte dell'assemblea degli aderenti.

4. Le organizzazioni di volontariato possono assumere lavoratori dipendenti o avvalersi di prestazioni di lavoro autonomo esclusivamente nei limiti necessari al loro regolare funzionamento oppure occorrenti a qualificare o specializzare l'attività da esse svolta.

5. Le organizzazioni svolgono le attività di volontariato mediante strutture proprie o, nelle forme e nei modi previsti dalla legge, nell'ambito di strutture pubbliche o con queste convenzionate.

Art. 4. Assicurazione degli aderenti ad organizzazioni di volontariato.

1. Le organizzazioni di volontariato debbono assicurare i propri aderenti, che prestano attività di volontariato, contro gli infortuni e le malattie connessi allo svolgimento dell'attività stessa, nonché per la responsabilità civile verso i terzi.

2. Con decreto del Ministro dell'industria, del commercio e dell'artigianato, da emanarsi entro sei mesi dalla data di entrata in vigore della presente legge, sono individuati meccanismi assicurativi semplificati, con polizze anche numeriche o collettive, e sono disciplinati i relativi controlli.

Art. 5. Risorse economiche.

1. Le organizzazioni di volontariato traggono le risorse economiche per il loro funzionamento e per lo svolgimento della propria attività da:

a) contributi degli aderenti;

b) contributi di privati;

c) contributi dello Stato, di enti o di istituzioni pubbliche finalizzati esclusivamente al sostegno di specifiche e documentate attività o progetti;

d) contributi di organismi internazionali;

e) donazioni e lasciti testamentari;

f) rimborsi derivanti da convenzioni;

g) entrate derivanti da attività commerciali e produttive marginali.

2. Le organizzazioni di volontariato, prive di personalità giuridica, iscritte nei registri di cui all'articolo 6, possono acquistare beni mobili registrati e beni immobili occorrenti per lo svolgimento della propria attività. Possono inoltre, in deroga agli articoli 600 e 786 del codice civile,

accettare donazioni e, con beneficio d'inventario, lasciti testamentari, destinando i beni ricevuti e le loro rendite esclusivamente al conseguimento delle finalità previste dagli accordi, dall'atto costitutivo e dallo statuto.

3. I beni di cui al comma 2 sono intestati alle organizzazioni. Ai fini della trascrizione dei relativi acquisti si applicano gli articoli 2659 e 2660 del codice civile.

4. In caso di scioglimento, cessazione ovvero estinzione delle organizzazioni di volontariato, ed indipendentemente dalla loro forma giuridica, i beni che residuano dopo l'esaurimento della liquidazione sono devoluti ad altre organizzazioni di volontariato operanti in identico o analogo settore, secondo le indicazioni contenute nello statuto o negli accordi degli aderenti, o, in mancanza, secondo le disposizioni del codice civile.

Art. 6. Registri delle organizzazioni di volontariato istituiti dalle regioni e dalle province autonome. - 1. Le regioni e le province autonome disciplinano l'istituzione e la tenuta dei registri generali delle organizzazioni di volontariato.

2. L'iscrizione ai registri è condizione necessaria per accedere ai contributi pubblici nonché per stipulare le convenzioni e per beneficiare delle agevolazioni fiscali, secondo le disposizioni di cui, rispettivamente, agli articoli 7 e 8.

3. Hanno diritto ad essere iscritte nei registri le organizzazioni di volontariato che abbiano i requisiti di cui all'articolo 3 e che alleghino alla richiesta copia dell'atto costitutivo e dello statuto o degli accordi degli aderenti.

4. Le regioni e le province autonome determinano i criteri per la revisione periodica dei registri, al fine di verificare il permanere dei requisiti e l'effettivo svolgimento dell'attività di volontariato da parte delle organizzazioni iscritte. Le regioni e le province autonome dispongono la cancellazione dal registro con provvedimento motivato.

5. Contro il provvedimento di diniego dell'iscrizione o contro il provvedimento di cancellazione è ammesso ricorso, nel termine di trenta giorni dalla comunicazione, al tribunale amministrativo regionale, il quale decide in camera di consiglio, entro trenta giorni dalla scadenza del termine per il deposito del ricorso, uditi i difensori delle parti che ne abbiano fatto richiesta. La decisione del tribunale è appellabile, entro trenta giorni dalla notifica della stessa, al Consiglio di Stato, il quale decide con le medesime modalità e negli stessi termini.

6. Le regioni e le province autonome inviano ogni anno copia aggiornata dei registri all'Osservatorio nazionale per il volontariato, previsto dall'articolo 12.

7. Le organizzazioni iscritte nei registri sono tenute alla conservazione della documentazione relativa alle entrate di cui all'articolo 5, comma 1, con l'indicazione nominativa dei soggetti eroganti.

Art. 7. Convenzioni.

1. Lo Stato, le regioni, le province autonome, gli enti locali e gli altri enti pubblici possono stipulare convenzioni con le organizzazioni di volontariato iscritte da almeno sei mesi nei registri di cui all'articolo 6 e che dimostrino attitudine e capacità operativa.

2. Le convenzioni devono contenere disposizioni dirette a garantire l'esistenza delle condizioni necessarie a svolgere con continuità le attività oggetto della convenzione, nonché il rispetto dei diritti e della dignità degli utenti. Devono inoltre prevedere forme di verifica delle prestazioni e di controllo della loro qualità nonché le modalità di rimborso delle spese.

3. La copertura assicurativa di cui all'articolo 4 è elemento essenziale della convenzione e gli oneri relativi sono a carico dell'ente con il quale viene stipulata la convenzione medesima.

Art. 8. Agevolazioni fiscali.

1. Gli atti costitutivi delle organizzazioni di volontariato di cui all'articolo 3, costituite esclusivamente per fini di solidarietà, e quelli connessi allo svolgimento delle loro attività sono esenti dall'imposta di bollo e dall'imposta di registro.

2. Le operazioni effettuate dalle organizzazioni di volontariato di cui all'articolo 3, costituite esclusivamente per fini di solidarietà, non si considerano cessioni di beni, né prestazioni di servizi ai fini dell'imposta sul valore aggiunto; le donazioni e le attribuzioni di eredità o di legato sono esenti da ogni imposta a carico delle organizzazioni che perseguono esclusivamente i fini suindicati.

3. (1).

4. I proventi derivanti da attività commerciali e produttive marginali non costituiscono redditi imponibili ai fini dell'imposta sul reddito delle persone giuridiche (IRPEG) e dell'imposta locale sui redditi (ILOR), qualora sia documentato il loro

totale impiego per i fini istituzionali dell'organizzazione di volontariato. I criteri relativi al concetto di marginalità di cui al periodo precedente, sono fissati dal Ministro delle finanze con proprio decreto, di concerto con il Ministro per gli affari sociali (2).

(1) Aggiunge il comma 1-ter all'art. 17, della legge 29 dicembre 1990, n. 408 che, quindi recita:

"1-ter. Con i decreti legislativi di cui al comma 1, e secondo i medesimi principi e criteri direttivi, saranno introdotte misure volte a favorire le erogazioni liberali in denaro a favore delle organizzazioni di volontariato costituite esclusivamante ai fini di solidarietà, purché le attività siano destinate a finalità di volontariato, riconosciute idonee in base alla normativa vigente in materia e che risultano iscritte senza interruzione da almeno due anni negli appositi registri. A tal fine, in deroga alla disposizione di cui alla lettera a) del comma 1, dovrà essere prevista la deducibilità delle predette erogazioni, ai sensi degli artt. 10, 65 e 110 del testo unico delle imposte sui redditi, approvato con D.P.R. 22 dicembre 1986, n. 917, e successive modificazioni e integrazioni, per un ammontare non superiore a lire 2 milioni ovvero, ai fini del reddito di impresa, nella misura del 50 per cento della somma erogata entro il limite del 2 per cento degli utili dichiarati e fino ad un massimo di lire 100 milioni"

(2) Frase così modificata dall'art. 18, del Decreto Legge 29 aprile 1994, n. 260.

Si ricorda, inoltre, che con D.M. 25 maggio 1995, sono stati fissati i criteri per l'individuazione delle attività commerciali e produttive marginali svolte dalle organizzazioni di volontariato.

Art. 9. Valutazione dell'imponibile.

1. Alle organizzazioni di volontariato iscritte nei registri di cui all'articolo 6 si applicano le disposizioni di cui all'articolo 20, primo comma, del decreto del Presidente della Repubblica 29 settembre 1973, n. 598, come sostituito dall'articolo 2 del decreto del Presidente della Repubblica 28 dicembre 1982, n. 954.

Art. 10. Norme regionali e delle province autonome.

1. Le leggi regionali e provinciali devono salvaguardare l'autonomia di organizzazione e di iniziativa del volontariato e favorirne lo sviluppo.

2. In particolare, disciplinano:

a) le modalità cui dovranno attenersi le organizzazioni per lo svolgimento delle prestazioni che formano oggetto dell'attività di volontariato, all'interno delle strutture pubbliche e di strutture convenzionate con le regioni e le province autonome;

b) le forme di partecipazione consultiva delle organizzazioni iscritte nei registri di cui all'articolo 6 alla programmazione degli interventi nei settori in cui esse operano;

c) i requisiti ed i criteri che danno titolo di priorità nella scelta delle organizzazioni per la stipulazione delle convenzioni, anche in relazione ai diversi settori di intervento;

d) gli organi e le forme di controllo, secondo quanto previsto dall'articolo 6;

e) le condizioni e le forme di finanziamento e di sostegno delle attività di volontariato;

f) la partecipazione dei volontari aderenti alle organizzazioni iscritte nei registri di cui all'articolo 6 ai corsi di formazione, qualificazione e aggiornamento professionale svolti o promossi dalle regioni, dalle province autonome e dagli enti locali nei settori di diretto intervento delle organizzazioni stesse.

Art. 11. Diritto all'informazione ed accesso ai documenti amministrativi.

1. Alle organizzazioni di volontariato, iscritte nei registri di cui all'articolo 6, si applicano le disposizioni di cui al capo V della legge 7 agosto 1990, n. 241.

2. Ai fini di cui al comma 1 sono considerate situazioni giuridicamente rilevanti quelle attinenti al perseguimento degli scopi statutari delle organizzazioni.

Art. 12. Osservatorio nazionale per il volontariato.

1. Con decreto del Presidente del Consiglio dei Ministri, su proposta del Ministro per gli affari sociali, è istituito l'Osservatorio nazionale per il volontariato, presieduto dal Ministro per gli affari sociali o da un suo delegato e composto da dieci rappresentanti delle organizzazioni e delle federazioni di volontariato operanti in almeno sei regioni, da due esperti e da tre rappresentanti delle organizzazioni sindacali maggiormente rappresentative. L'Osservatorio, che si avvale del personale, dei mezzi e dei servizi messi a disposizione dal Segretariato generale della

Presidenza del Consiglio dei Ministri, ha i seguenti compiti:

a) provvedere al censimento delle organizzazioni di volontariato ed alla diffusione della conoscenza delle attività da esse svolte;

b) promuovere ricerche e studi in Italia e all'estero;

c) fornire ogni utile elemento per la promozione e lo sviluppo del volontariato;

d) approvare progetti sperimentali elaborati, anche in collaborazione con gli enti locali, da organizzazioni di volontariato iscritte nei registri di cui all'articolo 6 per far fronte ad emergenze sociali e per favorire l'applicazione di metodologie di intervento particolarmente avanzate;

e) offrire sostegno e consulenza per progetti di informatizzazione e di banche-dati nei settori di competenza della presente legge;

f) pubblicare un rapporto biennale sull'andamento del fenomeno e sullo stato di attuazione delle normative nazionali e regionali;

g) sostenere, anche con la collaborazione delle regioni, iniziative di formazione ed aggiornamento per la prestazione dei servizi;

h) pubblicare un bollettino periodico di informazione e promuovere altre iniziative finalizzate alla circolazione delle notizie attinenti l'attività di volontariato;

i) promuovere, con cadenza triennale, una Conferenza nazionale del volontariato, alla quale partecipano tutti i soggetti istituzionali, i gruppi e gli operatori interessati.

2. E' istituito, presso la Presidenza del Consiglio dei Ministri - Dipartimento per gli affari sociali, il Fondo per il volontariato, finalizzato a sostenere finanziariamente i progetti di cui alla lettera d) del comma 1.

Art. 13. Limiti di applicabilità.

1. E' fatta salva la normativa vigente per le attività di volontariato non contemplate nella presente legge, con particolare riferimento alle attività di cooperazione internazionale allo sviluppo, di protezione civile e a quelle connesse con il servizio civile sostitutivo di cui alla legge 15 dicembre 1972, n. 772.

Art. 14. Autorizzazione di spesa e copertura finanziaria.

1. Per il funzionamento dell'Osservatorio nazionale per il volontariato, per la dotazione del Fondo di cui al comma 2 dell'articolo 12 e per l'organizzazione della Conferenza nazionale del volontariato di cui al comma 1, lettera i), dello stesso articolo 12, è autorizzata una spesa di due miliardi di lire per ciascuno degli anni 1991, 1992 e 1993.

2. All'onere di cui al comma 1 si provvede mediante corrispondente riduzione dello stanziamento iscritto, ai fini del bilancio triennale 1991-1993, al capitolo 6856 dello stato di previsione del Ministero del tesoro per l'anno finanziario 1991, all'uopo utilizzando parzialmente l'accantonamento: "Legge-quadro sulle organizzazioni di volontariato".

3. Le minori entrate derivanti dall'applicazione dei commi 1 e 2 dell'articolo 8 sono valutate complessivamente in lire 1 miliardo per ciascuno degli anni 1991, 1992 e 1993. Al relativo onere si fa fronte mediante utilizzazione dello stanziamento iscritto, ai fini del bilancio triennale 1991-1993, al capitolo 6856 dello stato di previsione del Ministero del tesoro per l'anno finanziario 1991, all'uopo utilizzando parzialmente l'accantonamento: "Legge-quadro sulle organizzazioni di volontariato".

Art. 15. Fondi speciali presso le regioni.

1. Gli enti di cui all'articolo 12, comma 1, del decreto legislativo 20 novembre 1990, n. 356, devono prevedere nei propri statuti che una quota non inferiore ad un quindicesimo dei propri proventi, al netto delle spese di funzionamento e dell'accantonamento di cui alla lettera d) del comma 1 dello stesso articolo 12, venga destinata alla costituzione di fondi speciali presso le regioni al fine di istituire, per il tramite degli enti locali, centri di servizio a disposizione delle organizzazioni di volontariato, e da queste gestiti, con la funzione di sostenerne e qualificarne l'attività.

2. Le casse di risparmio, fino a quando non abbiano proceduto alle operazioni di ristrutturazione di cui all'articolo 1 del citato decreto legislativo n. 356 del 1990, devono destinare alle medesime finalità di cui al comma 1 del presente articolo una quota pari ad un decimo delle somme destinate ad opere di beneficienza e di pubblica utilità ai sensi dell'articolo 35, terzo comma, del regio decreto 25 aprile 1929, n. 967, e successive modificazioni.

3. Le modalità di attuazione delle norme di cui ai commi 1 e 2, saranno stabilite con decreto del Ministro del tesoro, di concerto con il Ministro per gli affari sociali, entro tre mesi dalla data di pubblicazione della presente legge nella Gazzetta Ufficiale.

Art. 16. Norme transitorie e finali.

1. Fatte salve le competenze delle regioni a statuto speciale e delle province autonome di Trento e di Bolzano, le regioni provvedono ad emanare o adeguare le norme per l'attuazione dei principi contenuti nella presente legge entro un anno dalla data della sua entrata in vigore.

Art. 17. Flessibilità nell'orario di lavoro.

1. I lavoratori che facciano parte di organizzazioni iscritte nei registri di cui all'articolo 6, per poter espletare attività di volontariato, hanno diritto di usufruire delle forme di flessibilità di orario di lavoro o delle turnazioni previste dai contratti o dagli accordi collettivi, compatibilmente con l'organizzazione aziendale.

2.(3). (3) Aggiungeva un ultimo comma all'art. 3 della Legge 29 marzo 1983, n. 93 che tuttavia è stato abrogato dall'articolo 74 del Decreto Legislativo 3 febbraio 1993, n. 29. Si ricorda che il comma prevedeva particolari forme di flessibilità degli orari di lavoro o di turnazioni per i lavoratori impegnati all'interno di organizzazioni di volontariato.

12.6. Other laws

Presidental Decree establishing the ONLUS Agency

The Presidental Decree establishing the ONLUS Agency "Decreto del Presidente del consiglio dei Ministri del 21 marzo 2001, n. 329 Regolamento recante norme per l'Agenzia per le organizzazioni non lucrative di utilità sociale"[381].

Art. 1. Sede dell'Agenzia

1. L'organismo di controllo sugli enti non commerciali e sulle organizzazioni non lucrative di utilità sociale, istituito, ai sensi dell'articolo 3, comma 190, della legge 23 dicembre 1996, n. 662, con decreto del Presidente del Consiglio dei Ministri 26 settembre 2000, denominato Agenzia per le organizzazioni non lucrative di utilità sociale, e di seguito designata "Agenzia", ha sede in Milano. 2

Art. 2. Vigilanza

1. L'Agenzia opera sotto la vigilanza del Presidente del Consiglio dei Ministri, e per sua delega del Ministro per la solidarietà sociale, e del Ministro delle finanze.

2. Entro il 10 marzo di ogni anno l'Agenzia trasmette al Presidente del Consiglio dei Ministri una relazione sull'attività' svolta l'anno precedente. Tale relazione e' presentata al Parlamento entro il

30 marzo.

Art. 3. Attribuzioni

1. Nell'esercizio delle attribuzioni di cui all'articolo 3, commi 191 e 192 della legge 23 dicembre 1996, n. 662, l'Agenzia:

nell'ambito della normativa vigente, esercita i poteri di indirizzo, promozione, vigilanza e ispezione per la uniforme e corretta osservanza della disciplina legislativa e regolamentare per quanto concerne le organizzazioni non lucrative di utilità sociale, il terzo settore e gli enti non commerciali, di seguito denominati "organizzazioni, terzo settore e enti";

formula osservazioni e proposte in ordine alla normativa delle organizzazioni, del terzo settore e degli enti;

promuove iniziative di studio e ricerca delle organizzazioni, del terzo settore e degli enti in Italia e all'estero;

promuove campagne per lo sviluppo e la conoscenza delle organizzazioni, del terzo settore e degli enti in Italia, al fine di promuoverne e diffonderne la conoscenza e di valorizzarne il suo ruolo di promozione civile e sociale;

promuove azioni di qualificazione degli standard in materia di formazione e di aggiornamento per lo svolgimento delle attività delle organizzazioni, del terzo settore e degli enti;

cura la raccolta, l'aggiornamento ed il monitoraggio dei dati e documenti delle organizzazioni, del terzo settore e degli enti in Italia;

[381] http://www.agenziaperleonlus.it/intranet/Agenzia-ON/Normativa-/index.htm, 18 November 2004.

promuove scambi di conoscenza e forme di collaborazione fra realtà italiane delle organizzazioni, del terzo settore e degli enti con analoghe realtà all'estero;

segnala alle autorità competenti i casi nei quali norme di legge o di regolamento determinano distorsioni nell'attività' delle organizzazioni, del terzo settore e degli enti, formulando proposte di indirizzo ed interpretazione;

vigila sull'attività' di raccolta di fondi e di sollecitazione della fede pubblica, anche attraverso l'impiego di mezzi di comunicazione svolta dalle organizzazioni, dal terzo settore e dagli enti, allo scopo di assicurare la tutela da abusi e le pari opportunità di accesso ai mezzi di finanziamento;

elabora proposte sull'organizzazione dell'anagrafe unica delle ONLUS di cui all'articolo 11 del decreto legislativo 4 dicembre 1997, n. 460, tenendo conto dei criteri di iscrizione ai registri degli organismi di volontariato e delle cooperative sociali previsti dalla legge 8 novembre 1991, n. 381, e dei criteri che presiedono al riconoscimento delle organizzazioni non governative di cui alla legge 26 febbraio 1987, n. 49;

nei casi di scioglimento degli enti o organizzazioni, rende parere vincolante sulla devoluzione del loro patrimonio ai sensi, rispettivamente, degli articoli 10, comma 1, lettera f), del decreto legislativo 4 dicembre 1997, n. 460, e 111, comma 4-quinquies, lettera b), del testo unico delle imposte sui redditi, approvato con decreto del Presidente della Repubblica 22 dicembre 1986, n. 917, e 4, settimo comma, lettera b), del decreto del Presidente della Repubblica 26 ottobre 1972, n. 633, fatte salve le normative relative a specifiche organizzazioni ed enti. Detto parere deve essere comunicato, contestualmente, alla Presidenza del Consiglio dei Ministri, ai Ministeri delle finanze, del lavoro e della previdenza sociale e per la solidarietà sociale;

collabora nella uniforme applicazione delle norme tributarie, formulando al Ministero delle finanze proposte su fattispecie concrete o astratte riguardanti il regime fiscale delle organizzazioni, terzo settore e enti; m) promuove iniziative di collaborazione, di integrazione e di confronto fra la pubblica amministrazione, con particolare riferimento agli enti locali, e le realtà delle organizzazioni e degli enti.3

Art. 4.Relazioni con le pubbliche amministrazioni

1. Le pubbliche amministrazioni interessate possono sottoporre al parere dell'Agenzia gli atti amministrativi di propria competenza riguardanti le organizzazioni, il terzo settore e gli enti.

2. Le amministrazioni statali sono tenute a richiedere preventivamente il parere dell'Agenzia in relazione a:

iniziative legislative e di rilevanza generale riguardanti la promozione, l'organizzazione e l'attività' delle organizzazioni, del terzo settore e degli enti;

individuazione delle categorie delle organizzazioni, del terzo settore e degli enti cui destinare contributi pubblici;

organizzazione dell'anagrafe unica delle ONLUS, di cui all'articolo 11 del decreto legislativo 4 dicembre 1997, n. 460;

tenuta dei registri e degli albi delle cooperative sociali previsti dalla legge 8 novembre 1991, n. 381;

riconoscimento delle organizzazioni non governative ai sensi della legge 26 febbraio 1987, n. 49;

decadenza totale o parziale delle agevolazioni previste dal decreto legislativo 4 dicembre 1997, n. 460.

3. Decorsi trenta giorni dalla richiesta dei pareri di cui al comma 2, le amministrazioni interessate procedono autonomamente. Ove sia necessaria una istruttoria più approfondita l'Agenzia può concordare un termine maggiore.4

Art. 5. Poteri dell'Agenzia

1. Per l'esercizio delle proprie funzioni l'Agenzia:

corrisponde con tutte le pubbliche amministrazioni e gli enti di diritto pubblico, instaurando con essi forme di collaborazione utili ai fini dell'indirizzo, della promozione, della conoscenza e del controllo delle organizzazioni, del terzo settore e degli enti in Italia;

promuove indagini conoscitive di natura generale nei settori operativi delle organizzazioni, del terzo settore e degli enti;

consulta, in via periodica, le associazioni rappresentative degli interessi di settore delle organizzazioni, del terzo settore e degli enti riconosciute come parti sociali dal Governo;

puo' assumere le seguenti iniziative utili ai fini dell'istruttoria della propria attività consultiva, di indirizzo e controllo:

invitare i rappresentanti delle organizzazioni, del terzo settore e degli enti a comparire per fornire dati e notizie;

inviare ai rappresentanti delle organizzazioni, del terzo settore e degli enti questionari relativi a dati e notizie di carattere specifico con invito a restituirli compilati e firmati;

richiedere alle pubbliche amministrazioni, agli enti pubblici, a società ed imprenditori commerciali (ai soggetti titolari di partita IVA) la comunicazione di dati e notizie ovvero la trasmissione di atti e documenti relativi a organizzazioni, terzo settore ed enti indicati singolarmente o per categorie;

richiedere copia o estratti di atti e documenti riguardanti organizzazioni, terzo settore ed enti depositati presso i notai, gli uffici del territorio e gli altri pubblici ufficiali; le copie e gli estratti degli atti e documenti, formati e conservati dalle pubbliche amministrazioni devono essere rilasciati gratuitamente;

richiede ai competenti organi dell'Amministrazione finanziaria di eseguire specifici controlli al fine di verificare i presupposti soggettivi ed oggettivi delle agevolazioni tributarie usufruite o

invocate da singoli enti e associazioni, anche sulla base degli elementi comunque in suo possesso;

comunica agli organi competenti, per l'adozione di provvedimenti conseguenziali, le violazioni e anomalie riscontrate in occasione dello svolgimento della propria attività di controllo; trasmette all'ufficio delle entrate competente il processo verbale delle violazioni constatate, anche ai fini dell'irrogazione delle sanzioni di cui all'articolo 28 del decreto legislativo 4 dicembre 1997, n. 460;

inoltra specifiche richieste di dati, notizie e documenti alle organizzazioni, al terzo settore ed agli enti ovvero alle pubbliche amministrazioni, agli enti pubblici, a società ed imprenditori commerciali (ai soggetti titolari di partita IVA) per assicurare la tutela da abusi nell'attività di raccolta di fondi e di sollecitazione della fede pubblica attraverso l'impiego dei mezzi di comunicazione.5

Art. 6. Composizione dell'Agenzia

1. L'Agenzia e' un organo collegiale costituito dal presidente e da dieci componenti, nominati con decreto del Presidente del Consiglio dei Ministri, di cui tre nominati su proposta, rispettivamente del Ministro delle finanze, del Ministro del lavoro e della previdenza sociale e del Ministro per la solidarietà sociale e uno nominato su proposta della Conferenza permanente per i rapporti tra lo Stato, le regioni e le province autonome.

2. Il presidente e' scelto tra persone di notoria indipendenza, che abbiano ricoperto incarichi istituzionali di responsabilità e rilievo. I dieci componenti sono scelti tra persone alle quali siano riconosciute elevate competenze ed esperienza professionale nelle discipline economico-finanziarie o nel settore di attività degli enti ed organizzazioni controllati. A pena di decadenza essi non possono avere interessi diretti o stabilmente collegati negli enti e organizzazioni soggetti al controllo dell'Agenzia.

3. Tutti i componenti durano in carica cinque anni e non possono essere confermati.

Art. 7. Norme di funzionamento

1. L'Agenzia e' convocata dal presidente, quando lo ritiene opportuno ovvero su richiesta di almeno quattro componenti. Il presidente ne stabilisce l'ordine del giorno, designa i relatori e dirige i lavori. Ogni componente può richiedere al presidente la convocazione dell'Agenzia indicandone le ragioni. Almeno quattro componenti possono chiedere l'inserimento di punti specifici all'ordine del giorno. Il presidente, previa verifica di conformità, li inserisce nella prima seduta utile.

2. Per la validità delle deliberazioni dell'Agenzia e' necessaria la presenza del presidente e di un numero di componenti non inferiore a quattro. Le deliberazioni sono adottate a maggioranza dei votanti; in caso di parità di voti prevale il voto del presidente.

3. La pubblicità degli atti dell'Agenzia e' assicurata attraverso un apposito bollettino ed anche con modalità telematiche.

4. L'Agenzia adotta, a maggioranza assoluta dei membri di cui all'articolo 6, comma 1, lettera a), il regolamento interno recante le norme di organizzazione e funzionamento.

Art. 8. Indennità di funzione per il presidente e per i componenti dell'Agenzia

1. Al presidente e a ciascuno degli altri componenti dell'Agenzia compete una indennità di funzione il cui importo e' determinato con decreto del Presidente del Consiglio dei Ministri su

proposta del Ministro delle finanze e del Ministro del tesoro, del bilancio e della programmazione economica.

Art. 9. Ufficio di segreteria

1. L'Agenzia, in sede di prima applicazione, si avvale di un numero non superiore a quindici unità di personale messe a disposizione dal comune di Milano, nonché di un contingente non superiore a venti unità di personale di cui un numero non superiore a dieci provenienti dalla Presidenza del Consiglio dei Ministri, dal Ministero delle finanze, dal Ministero del tesoro, del bilancio e della programmazione economica, e un numero non superiore a dieci provenienti da altre amministrazioni pubbliche e dagli enti locali, collocati in posizione di comando, fuori ruolo o altra equipollente secondo i rispettivi ordinamenti, nelle forme previste dalla normativa vigente. Il personale di cui al presente comma mantiene il trattamento economico fondamentale delle amministrazioni o degli enti di appartenenza ed i relativi oneri rimangono a carico di tali amministrazioni o enti. Agli oneri accessori provvede l'Agenzia con i propri fondi.

Art. 10. Disposizioni finanziarie

1. Le entrate dell'Agenzia sono costituite da:

a) stanziamenti a carico dello Stato stabiliti con legge;

b) somme derivanti da contributi da parte di enti pubblici;

c) somme derivanti da convenzioni con soggetti pubblici e privati;

d) somme derivanti da altre, eventuali entrate.

2. L'Agenzia, con delibera da approvare con decreto del Presidente del Consiglio dei Ministri, sentiti il Ministro del tesoro, del bilancio e della programmazione economica, il Ministro delle finanze, il Ministro della solidarietà sociale, e il Ministro del lavoro e della previdenza sociale, stabilisce le norme concernenti i bilanci, i rendiconti e la gestione delle spese, nel rispetto dei principi delle leggi di contabilità.

Il presente decreto, munito del sigillo dello Stato, sarà inserito nella Raccolta ufficiale degli atti normativi della Repubblica italiana. E' fatto obbligo a chiunque spetti di osservarlo e farlo osservare.

13. Luxembourg

13.1. Law on Associations

Law on non-profit making associations and foundations "Loi du 21 avril 1928 sur les associations et les fondations sans but lucratif, telle qu'elle a été modifiée par les lois des 22 février 1984 et 4 mars 1994 sur les associations et les fondations sans but lucrative"[382].

Des associations sans but lucratif

Art. 1er

L'association sans but lucratif est celle qui ne se livre pas à des opérations industrielles ou commerciales, ou qui ne cherche pas à procurer à ses membres un gain matériel.

Elle jouit de la personnalité civile si elle réunit les conditions déterminées ci-après.

Art. 2. Les statuts d'une association sans but lucratif doivent mentionner:

1o la dénomination et le siège de l'association. Ce siège doit être fixé dans le Grand-Duché;

2o l'objet ou les objets en vue desquels elle est formée;

3o le nombre minimum des associés. Il ne pourra être inférieur à trois;

4o les noms, prénoms, professions, domiciles et nationalités des associés ;

5o les conditions mises à l'entrée et à la sortie des membres;

6o les attributions et le mode de convocation de l'assemblée générale ainsi que les conditions dans lesquelles ses résolutions seront portées à la connaissance des associés et des tiers;

7o le mode de nomination et les pouvoirs des administrateurs;

8o le taux maximum des cotisations ou des versements à effectuer par les membres de l'association;

9o le mode de règlement des comptes;

[382] http://www.legilux.public.lu/leg/a/archives/1994/0170403/0170403.pdf#page=2, 14 December 2004.

10o les règles à suivre pour modifier les statuts;

11o l'emploi du patrimoine de l'association dans le cas où celle-ci serait dissoute.

Ces mentions sont constatées dans un acte authentique ou sous seing privé.

Art. 3.

La personnalité civile est acquise à l'association à compter du jour où ses statuts sont publiés au Mémorial, Recueil Spécial des Sociétés et Associations, conformément à l'article 9 de la loi modifiée du 10 août 1915.

Au moment du dépôt des statuts auprès du préposé au registre de commerce et des sociétés, l'indication des noms, prénoms, professions et domiciles des administrateurs désignés en conformité des statuts ainsi que de l'adresse du siege social est requise.Toute modification doit être signalée au préposé.

Art. 4.

Une délibération de l'assemblée générale est nécessaire pour les objets suivants:

1o la modification des statuts;

2o la nomination et la révocation des administrateurs;

3o l'approbation des budgets et des comptes;

4o la dissolution de la société.

Art. 5.

L'assemblée doit être convoquée par les administrateurs dans les cas prévus par les statuts, ou lorsqu'un cinquième des associés en fait la demande.

Art. 6.

Tous les membres de l'association doivent être convoqués aux assemblées générales. L'ordre du jour doit être joint à cette convocation. Toute proposition, signée d'un nombre de membres égal au vingtième de la dernière liste annuelle, doit être portée à l'ordre du jour.

Les résolutions ne pourront être prises en dehors de l'ordre du jour que si les statuts le permettent expressément.

Il sera loisible aux associés de se faire représenter à l'assemblée générale par un autre associé ou, si les statuts l'autorisent, par un tiers.

Art. 7.

Tous les associés ont un droit de vote égal dans l'assemblée générale et les résolutions sont prises à la majorité des voix des membres présents, sauf dans le cas où il en est décidé autrement par les statuts ou par la loi.

Art. 8.

L'assemblée générale ne peut valablement délibérer sur les modifications aux statuts que si l'objet de celles-ci est spécialement indiqué dans la convocation, et si l'assemblée réunit les deux tiers des membres. Aucune modification ne peut être adoptée qu'à la majorité des deux tiers des voix. Si les deux tiers des membres ne sont pas présents ou représentés à la première réunion, il peut être convoqué une seconde réunion qui pourra délibérer quel que soit le nombre des membres présents ; mais, dans ce cas, la décision sera soumise à l'homologation du tribunal civil.

Toutefois, si la modification porte sur l'un des objets en vue desquels l'association s'est constituée, les règles qui précèdent sont modifiées comme suit:

a) la seconde assemblée ne sera valablement constituée que si la moitié au moins de ses membres sont présents ou représentés;

b) la décision n'est admise, dans l'une ou dans l'autre assemblée, que si elle est votée à la majorité des trois quarts des voix;

c) si, dans la seconde assemblée, les deux tiers des associés ne sont pas présents ou représentés, la décision devra être homologuée par le tribunal civil.

Art. 9.

Toute modification aux statuts doit être publiée, dans le mois de sa date, au Mémorial, Recueil Spécial des Sociétés et Associations.

Art. 10.

Une liste indiquant, par ordre alphabétique, les noms, prénoms, demeures et nationalités des membres de l'association, doit être déposée au greffe du tribunal civil du siège de l'association dans le mois de la publication des statuts. Elle est complétée, chaque année, par l'indication dans l'ordre alphabétique des modifications qui se sont produites parmi les membres. Toute personne pourra en prendre gratuitement connaissance.

Faute par les statuts de déterminer le délai dans lequel la liste des membres devra être complétée, ce délai sera d'un mois à partir de la clôture de l'année sociale.

Art. 11.

Tous les actes, factures, annonces, publications et autres pièces émanées des associations sans but lucratif, doivent mentionner la dénomination sociale précédée ou suivie immédiatement de ces mots, écrits lisiblement et en toutes lettres :Association sans but lucratif.

Art. 12.

Tout membre d'une association sans but lucratif est libre de se retirer de l'association en adressant sa démission aux administrateurs. Est réputé démissionnaire l'associé qui, dans le délai indiqué par les statuts sous peine de démission, ne paye pas les cotisations lui incombant. Si les statuts ne règlent pas le cas, le délai dont l'expiration entraînera la démission de plein droit, sera de trois mois à partir de l'échéance des cotisations.

L'exclusion d'un associé ne peut être prononcée que dans les cas prévus par les statuts et par l'assemblée générale statuant à la majorité des deux tiers des voix. L'associé démissionnaire ou exclu n'a aucun droit sur le fonds social et ne peut pas réclamer le remboursement des cotisations qu'il a versées, à moins de stipulations contraires dans les statuts.

Art. 13.

Le conseil d'administration gère les affaires de l'association et la représente dans tous les actes judiciaires et extrajudiciaires. Il peut, sous sa responsabilité, déléguer ses pouvoirs à l'un de ses membres ou même, si les statuts ou l'assemblée générale l'y autorisent, à un tiers.

Il est tenu de soumettre tous les ans à l'approbation de l'assemblée générale le compte de l'exercice écoulé et le budget du prochain exercice.

Art. 14.

L'association est responsable, conformément au droit commun, des fautes imputables soit à ses préposés, soit aux organes par lesquels s'exerce sa volonté. Les administrateurs ne contractent aucune obligation personnelle relativement aux engagements de l'association. Leur responsabilité se limite à l'exécution du mandat qu'ils ont reçcu et aux fautes commises dans leur gestion.

Art. 15.

L'association ne peut posséder en propriété ou autrement que les immeubles nécessaires pour réaliser l'objet ou les objets en vue desquels elle est formée.

Art. 16.

«Les libéralités entre vifs ou testamentaires au profit d'une association sans but lucratif n'auront d'effet qu'autant qu'elles seront autorisées par un arrêté grand-ducal. Cette autorisation ne sera pas requise pour l'acceptation des libéralités mobilières dont la valeur n'excède pas cinq cent mille francs.» (Loi du 22 févier 1984)

Toutefois l'acceptation de la libéralité et la demande en délivrance pourront être faites provisoirement, à titre conservatoire, par l'association. L'autorisation qui interviendra ensuite, aura effet du jour de l'acceptation. L'autorisation ne sera accordée que si l'association s'est conformée aux dispositions des art. 3 et 9 et si elle a déposé au greffe du tribunal civil ses comptes annuels depuis sa création ou tout au moins ses comptes se rapportant aux dix derniers exercices annuels.

Un recours contre la décision intervenue est ouvert tant à l'association qui a demandé l'autorisation, qu'aux donateurs ou aux ayants cause du testateur auprès du Comité du contentieux du Conseil d'Etat, qui statue dans les formes prescrites par l'art. 34 de la loi du 16 janvier 18661. Ce recours doit être formé, sous peine de déchéance, dans le délai de dix jours à compter de la notification de la décision aux parties intéressées.

Art. 17.

Les libéralités entre vifs ou testamentaires au profit d'une association sans but lucratif ne portent pas préjudice aux droits des créanciers ou héritiers réservataires des donateurs ou testataires. Ils pourront poursuivre devant l'autorité judiciaire l'annulation de ces libéralités, conformément au droit commun.

Art. 18.

Le tribunal civil du siège de l'association pourra prononcer, à la requête, soit d'un associé, soit d'un tiers intéressé, soit du ministère public, la dissolution de l'association qui serait hors d'état de remplir les engagements qu'elle a assumés, qui affecterait son patrimoine ou les revenus de son patrimoine à des objets autres que ceux en vue desquels elle a été constituée, ou qui contreviendrait gravement soit à ses statuts, soit à la loi, soit à l'ordre public.

En rejetant la demande en dissolution, le tribunal pourra néanmoins prononcer l'annulation de l'acte incriminé.

Art. 19.

En cas de dissolution judiciaire d'une association sans but lucratif, le tribunal désignera un ou plusieurs liquidateurs qui, après l'acquittement du passif, disposeront des biens suivant la destination prévue par les statuts. Si les statuts n'en indiquent point, les liquidateurs convoqueront l'assemblée générale pour la déterminer.

A défaut d'une disposition statutaire et d'une décision de l'assemblée générale, les liquidateurs donneront aux biens une affectation qui se rapprochera autant que possible de l'objet en vue duquel l'association a été créée.

Les associés, les créanciers et le ministère public peuvent se pourvoir devant le tribunal contre la décision des liquidateurs.

Art. 20.

L'assemblée générale ne peut prononcer la dissolution de l'association que si les deux tiers de ses membres sont présents. Si cette condition n'est pas remplie, il pourra être convoqué une seconde réunion qui délibérera valablement quel que soit le nombre des membres présents. La dissolution ne sera admise que si elle est votée à la majorité des deux tiers des membres présents.

Toute décision qui prononce la dissolution, prise par une assemblée ne réunissant pas les deux tiers des membres de l'association, est soumise à l'homologation du tribunal civil.

Art. 21.

Le jugement qui prononce, soit la dissolution d'une association, soit l'annulation d'un de ses actes, est susceptible d'appel.

Il en est de même du jugement qui statue sur la décision des liquidateurs, dans le cas du dernier alinéa de l'art. 19, ou sur l'homologation d'une décision de l'assemblée générale, dans le cas du dernier alinéa de l'art. 20.

Art. 22.

A défaut de disposition statutaire, la décision de l'assemblée générale qui prononce la dissolution déterminera aussi l'affectation des biens, et, à défaut par l'assemblée générale de statuer sur ce point, les liquidateurs donneront aux biens une affectation qui se rapprochera autant que possible de l'objet en vue duquel l'association a été créée.

La liquidation s'opère dans ce cas par les soins d'un liquidateur ou de plusieurs liquidateurs qui exercent leurs fonctions, soit par application des statuts, soit en vertu d'une résolution de l'assemblée générale, soit, à défaut de celle-ci, en vertu d'une décision de justice, qui pourra être provoquée par tout intéressé ou par le ministère public.

Art. 23.

Les résolutions de l'assemblée générale et les décisions de justice relatives à la dissolution de l'association, aux conditions de la liquidation et à la désignation des liquidateurs sont publiées par extraits, aux annexes du Mémorial, ainsi que les noms, professions et adresses des liquidateurs.

Art. 24.

Il ne pourra être procédé à l'affectation de l'actif qu'après l'acquittement du passif.

Art. 25.

L'affectation des biens sera publiée aux annexes du Mémorial. Elle ne peut préjudicier aux droits des tiers. L'action des créanciers est prescrite par cinq ans à partir de cette publication.

Art. 26.

En cas d'omission des publications et formalités prescrites par les articles 2,3 alinéa 1er et 9, l'association ne pourra se prévaloir de la personnalité juridique à l'égard des tiers, lesquels auront néanmoins la faculté d'en faire état contre elle.

L'omission des publications et formalités prescrites par les articles 3 alinéa 2,10 et 11 aura pour effet de rendre inopposables aux tiers les faits qu'elles devaient constater, si l'omission leur a causé préjudice.

Art. 26-1. Les associations sans but lucratif et fondations valablement constituées à l'étranger conformément à la loi de l'Etat de leur siège statutaire ou de leur enregistrement sont reconnues de plein droit avec la capacité que leur reconnaît la loi de l'Etat de leur constitution, sous réserve que leurs activités ne contreviennent pas à l'ordre et à la sécurité publique et notamment ne compromettent pas les relations avec un autre Etat ou le maintien de la paix et de la sécurité internationales.

Sous cette réserve, elles peuvent transférer leur siège statutaire au Luxembourg, en observant les conditions de la loi de leur constitution. Le transfert emporte soumission à la loi luxembourgeoise, sans qu'il y ait acquisition d'une personnalité juridique nouvelle.

Les associations sans but lucratif et fondations constituées sous la loi luxembourgeoise peuvent transférer leur siège statutaire à l'étranger, sans qu'il y ait pour autant perte de leur personnalité juridique, à condition que l'Etat de leur nouveau siège statutaire reconnaisse la continuation de cette personnalité juridique. Les articles 15, 16 al. 1er, 2 et 4 et 17 sont applicables aux associations ou fondations reconnues dans la mesure où elles exercent des activités au Luxembourg.

Art. 26-2. Les associations sans but lucratif qui poursuivent un but d'intérêt général à caractère philanthropique, religieux, scientifique, artistique, pédagogique, social, sportif ou touristique peuvent être reconnues d'utilité publique par arrêté grand-ducal pris sur avis du Conseil d'Etat.

13.2. Law on Foundations

Law on non-profit making associations and foundations "Loi du 21 avril 1928 sur les associations et les fondations sans but lucratif, telle qu'elle a été modifiée par les lois des 22 février 1984 et 4 mars 1994 sur les associations et les fondations sans but lucrative"[383].

Des fondations

Art. 27.

Toute personne peut moyennant l'approbation par arrêté grand-ducal, affecter par acte authentique ou par testament tout ou partie de ses biens à la création d'une fondation qui jouit de la personnalité civile dans les conditions déterminées ci-après.

Sont seules considérées comme des fondations, les établissements qui, essentiellement à l'aide des revenus des capitaux affectés à leur création ou recueillis depuis et à l'exclusion de la poursuite d'un gain matériel, tendent à la réalisation d'une oeuvre d'un caractère philanthropique, social, religieux, scientifique, artistique, pédagogique, sportif ou touristique.

Art. 28.

Toute déclaration authentique et toute disposition testamentaire faite par le fondateur en vue de créer une fondation est communiquée au Ministre de la Justice aux fins d'approbation. Si le fondateur décède avant la communication de la déclaration au Ministre de la Justice, cette déclaration est faite par l'exécuteur testamentaire ou, s'il n'y en a pas, par les héritiers ou ayants cause. Jusqu'à l'approbation, le fondateur peut rétracter sa déclaration. Ce droit n'appartient pas à l'exécuteur testamentaire ni aux héritiers et ayants cause.

Si la création de la fondation est faite par disposition testamentaire, le testateur peut désigner un exécuteur testamentaire ayant la saisine, chargé de réaliser ses intentions.

Art. 29.

L'arrêté grand-ducal d'approbation prescrira les mesures d'application. Sauf la volonté contraire du fondateur, les droits de la «fondation»1

[383] http://www.legilux.public.lu/leg/a/archives/1994/0170403/0170403.pdf#page=2, 14 December 2004.

remonteront au jour où l'acte de fondation aura été communiqué au «Ministre de la Justice»1, et respectivement au jour du décès du fondateur, s'il s'agit d'un testament.

Art. 30.

L'institution ne jouira de la personnalité civile que du moment où ses statuts seront approuvés par arrêté grand-ducal. Les statuts doivent mentionner :

1o l'objet ou les objets en vue desquels l'institution est créée;

2o la dénomination et le siège de l'institution. Ce siège doit être fixé dans le Grand-Duché;

3o les noms, professions, domiciles et nationalités des administrateurs, ainsi que le mode selon lequel les nouveaux administrateurs seront désignés ultérieurement;

4o la destination des biens au cas où l'institution viendrait à disparaître.

Un recours devant le Comité du contentieux du Conseil d'Etat contre la décision intervenue sur la demande en approbation de l'acte constitutif ou des statuts, est accordé dans les délais, formes et conditions fixés par l'art. 16, alinéa 4, soit au fondateur, soit à ses exécuteurs testamentaires ou autres mandataires chargés de l'exécution de ses intentions et respectivement à ses héritiers ou ayants cause.

Art. 31.

Si le fondateur n'a pas déterminé les conditions d'après lesquelles les statuts peuvent être modifiés, ils ne pourront l'être que par accord entre le Ministre de la Justice et la majorité des administrateurs en fonction.

Art. 32.

Après avoir obtenu l'approbation par arrêté grand-ducal selon les formes prescrites par la présente loi, les statuts et leurs modifications sont publiés au Mémorial, Recueil Spécial des Sociétés et Associations, conformément à l'article 9 de la loi du 10 août 1915.

Il est fait mention au Mémorial, Recueil Spécial des Sociétés et Associations, à la suite de l'acte à publier, de la date de l'arrêté grand-ducal portant approbation de l'acte en question.

Au moment du dépôt des statuts auprès du préposé du registre de commerce et des sociétés, la remise d'une copie de l'arrêté grand-ducal d'approbation est requise.

Art. 33.

Les statuts d'une «fondation»1 peuvent décider que les administrateurs qui cessent d'exercer leur mandat, seront remplacés par les soins des administrateurs demeurés en fonctions, ou bien que les administrateurs seront, en cas de vacance, désignés dans les conditions que les statuts spécifient, soit par une autorité publique, soit par un établissement public ou une «fondation»1, soit par une association ou une société douée de la personnalité civile, soit par des particuliers.

Art. 34.

Les administrateurs d'une «fondation»1 sont tenus de communiquer au «Ministre de la Justice1 leur compte et leur budget chaque année dans les deux mois de la clôture de l'exercice. Le compte et le budget sont publiés dans le même délai aux annexes du Mémorial.

Art. 35.

La «fondation»1 ne peut posséder en propriété ou autrement que les immeubles nécessaires à l'accomplissement de sa mission.

Art. 36.

Les libéralités entre vifs ou testamentaires au profit d'une «fondation»1 n'auront d'effet qu'autant qu'elles seront autorisées suivant la distinction établie par l'art. 16. Les dispositions des alinéas 2 et 4 du même article seront applicables.

Art. 37.

La création d'une «fondation»1 et les libéralités entre vifs ou testamentaires au profit d'un tel établissement ne portent pas préjudice aux droits des créanciers ou héritiers réservataires des

fondateurs, donateurs ou testateurs. Ceux-ci pourront poursuivre devant l'autorité judiciaire l'annulation des libéralités, conformément au droit commun, et même, éventuellement, la dissolution de la «fondation»1 et la liquidation de ses biens.

Art. 38.

Les administrateurs d'une «fondation»1 ont les pouvoirs qui leur sont conférés par les statuts. Ils représentent l'établissement dans les actes judiciaires et extrajudiciaires.

Les biens de l'établissement répondent des engagements contractés en son nom.

Art. 39.

La «fondation»1 est civilement responsable des fautes de ses préposés, administrateurs ou autres organes qui le représentent.

Art. 40.

Le «Ministre de la Justice»1 veille à ce que les biens d'une «fondation»1 soient affectés à l'objet pour lequel l'institution a été créée.

Le tribunal civil du siège de la fondation peut, à la requête d'un tiers intéressé ou du ministère public, prononcer la révocation des administrateurs qui auront fait preuve de négligence ou d'impéritie, qui ne remplissent pas les obligations qui leur sont imposées par la loi ou par les statuts, disposent des biens de l'institution contrairement à leur destination ou pour des fins contraires à l'ordre public.

Dans ce cas, les nouveaux administrateurs seront nommés en conformité des statuts, ou, si le tribunal le décide, par le «Ministre de la Justice»1.

Art. 41.

Si la «fondation»1 est devenue incapable de rendre à l'avenir les services pour lesquels elle a été instituée, le tribunal, à la requête d'un administrateur, d'un tiers intéressé ou du ministère public, pourra prononcer la dissolution de l'institution.

Si la dissolution est prononcée, le juge nomme un ou plusieurs liquidateurs qui, après apurement du passif, donnent aux biens la destination prévue par les statuts. Au cas où cette destination ne pourrait être réalisée, les liquidateurs à ce autorisés par le tribunal remettront les biens au «Ministre de la Justice»1. Celui-ci attribuera une destination se rapprochant autant que possible de l'objet en vue duquel l'institution a été créée.

Art. 42.

Tous jugements prononcés par application des art. 40 et 41 seront susceptibles d'appel.

Art. 43.

En cas d'omission des publications prescrites par la loi, la «fondation»1 ne pourra se prévaloir de la personnalité juridique à l'égard des tiers, lesquels auront néanmoins la faculté d'en faire état contre elle.

Art. 52.

Les institutions et associations sans but lucratif qui ont obtenu la personnalité civile antérieurement à l'entrée en vigueur de la présente loi, demeurent soumises aux lois et statuts qui les régissent.

Toutefois les dispositions d'ordre fiscal de la présente loi leur sont applicables, sous réserve des exemptions fiscals décrétées antérieurement en faveur d'associations ou d'établissements d'utilité publique.

13.3. Law on NPO

There is no specific law on NPOs in Luxembourg.

13.4. Law on NGO

There is no specific law on NGO in Luxembourg, but certain entities can be recognised as NGO for development co-operation. They are ruled by the Law on Development Co-operation from 6 January 1996 "Loi du 6 janvier 1996 sur la coopération au développement"[384].

Titre I. – Dispositions générales

[384] http://www.mae.lu/images/biblio/biblio-140-603.pdf, 15 December 2004.

Art. 1er. Les objectifs du Grand-Duché de Luxembourg en matière de coopération au développement sont notamment:

– le développement économique et social durable des pays en développement et plus particulièrement des plus défavorisés d'entre eux;

– l'insertion harmonieuse et progressive des pays en développement dans l'économie mondiale;

– la lutte contre la pauvreté dans les pays en développement.

Titre II. – Du Fonds de la Coopération au Développement

Art. 2. Il est créé un Fonds de la Coopération au Développement dénommé ci-après le «Fonds». Il a pour mission de contribuer au financement de la coopération au développement dans les pays en développement dans les domaines

– de la coopération bilatérale;

– de la coopération avec les organisations internationales;

– de la collaboration avec les organisations non gouvernementales luxembourgeoises;

– des agents de la coopération, des coopérants, des boursiers et des stagiaires.

Art. 3. Le Fonds est placé sous l'autorité du ministre ayant dans ses attributions la coopération au développement, ci-après dénommé «le ministre».

Art. 4. Sauf décision motivée du Gouvernement en conseil et sur avis du comité interministériel prévu à l'article 50 de la présente loi, le fonds peut intervenir dans les pays en développement dans les secteurs suivants:

– l'action sociale, y compris la santé, l'habitat, l'éducation, la formation professionnelle et la promotion de la condition féminine;

– l'assistance technique;

– la coopération économique et industrielle;

– la coopération dans le domaine de l'environnement;

– la coopération régionale;

– la coopération culturelle et scientifique;

– les actions dans le domaine des droits de l'homme et de la démocratisation;

– l'éducation au développement.

Le Fonds peut intervenir dans les pays en développement par des aides directes, par le financement ou le cofinancement de programmes ou des projets d'organismes publics ou privés, nationaux ou internationaux. Il peut intervenir dans la forme d'investissements ou d'études à effectuer au sujet des formes d'investissement.

Le financement des interventions peut se faire par des contributions ou subventions financières, en capital ou en nature, à accorder à des programmes ou projets.

Le financement des interventions peut se faire, sur décision conjointe du ministre et du ministre ayant dans ses attributions les finances, par des bonifications d'intérêts ou des crédits à accorder à des programmes ou projets.

Art. 5. Le Fonds est alimenté par des dotations budgétaires annuelles.

Art. 6. Le ministre présente chaque année à la Chambre des Députés un rapport sur le fonctionnement et les activités du Fonds, ainsi qu'un décompte spécifiant toutes les recettes et l'attribution des dépenses par pays et par grands types d'intervention sectorielle. Le rapport et le décompte sont soumis à la Chambre des Députés avec les observations éventuelles de la Chambre des Comptes. Ce rapport peut être complété par les autres interventions de l'administration publique en matière de coopération au développement.

Titre III. – De la coopération avec les organisations non gouvernementales luxembourgeoises

Chapitre 1 – De l'agrément

Art. 7.

Peuvent être agréées comme organisations non gouvernementales, les associations sans but lucratif ou les fondations, constituées conformément à la loi modifiée du 21 avril 1928

sur les associations et les fondations sans but lucratif, ainsi que les sociétés dotées de la personnalité juridique et reconnues d'utilité publique, qui ont pour objet social notamment la coopération au développement.

L'agrément est accordé par le ministre, sur base d'une demande de l'organisation justifiant ses capacités, ses compétences et son expérience dans le domaine de la coopération au développement et plus particulièrement dans la mise en œuvre de programmes et projets au bénéfice des populations des pays en développement.

L'agrément est accordé pour la durée d'un an et peut être renouvelé.

Chapitre 2 – Du cofinancement et de la donation globale

Art. 8.

A charge du Fonds et aux conditions déterminées par la présente loi, le ministre peut accorder aux organisations non gouvernementales luxembourgeoises qu'il a agréées, des subventions, sous forme de cofinancements ou de donations globales, destinées à des programmes ou projets de coopération qu'elles exécutent au bénéfice des pays en développement.

Le cofinancement est une subvention destinée à un programme ou projet de coopération précis. La donation globale est une subvention annuelle destinée à un ensemble limité de projets de coopération de faible envergure.

Art. 9.

Pour pouvoir bénéficier d'un cofinancement ou d'une donation globale, les programmes ou projets doivent:

1° concerner un ou plusieurs pays en développement et viser le développement de ce ou de ces pays,

2° être présentés en détail quant au lieu, au secteur et à la population bénéficiaire, quant au but et aux objectifs recherchés, quant aux moyens à mettre en oeuvre, quant au financement et quant au calendrier d'exécution,

3° être gérés par des personnes suffisamment compétentes pour garantir une bonne exécution et une parfaite administration financière.

Art. 10.

Au cas où un programme ou un projet à retenir pour un cofinancement ou une donation globale fait partie d'un programme ou projet plus vaste, celui-ci doit être présenté dans un descriptif renseignant notamment sur les bailleurs de fonds impliqués.

Art. 11.

Lorsqu'une organisation non gouvernementale agréée présente un programme ou projet, le ministre peut accorder à cette organisation, dans les limites des moyens budgétaires disponibles, un cofinancement ou une donation globale s'élevant jusqu'à un seuil d'intervention de trois cents pour cent de l'apport financier investi par cette organisation dans le programme ou projet.

Art. 12.

Sans dépasser le seuil d'intervention prévu à l'article précédent, le ministre peut déterminer plusieurs seuils d'intervention du cofinancement ou de la donation globale suivant un ensemble de critères à fixer par règlement grand-ducal. Le ministre peut déterminer un plafond financier annuel maximal pour un cofinancement et une donation globale à accorder à un programme ou projet.

Art. 13.

L'apport de l'organisation non gouvernementale agréée peut inclure un financement provenant de ses propres ressources et de sources d'autres organisations non gouvernementales agréées et des bénéficiaires locaux, sans que l'apport de ces derniers puisse dépasser celui des organisations non gouvernementales agréées. Les ressources propres de l'organisation non gouvernementale et les sources d'autres organisations non gouvernementales doivent être d'origine luxembourgeoise. Le ministre détermine les conditions dans lesquelles un apport autre que financier de la part des bénéficiaires locaux peut être valorisé et mis en compte.

Art. 14.

Le ministre détermine la procédure applicable à l'introduction des demandes de cofinancement et de donation globale ainsi que les modalités des

versements des cofinancements et donations globales accordées.

Art. 15.

Chaque programme ou projet subventionné doit faire l'objet d'un rapport d'exécution après son achèvement.

Le ministre peut demander la présentation d'un ou de plusieurs rapports intermédiaires au cours de l'exécution d'un programme ou projet. Il détermine la procédure applicable au contrôle de la gestion des moyens financiers mis à la disposition d'une organisation non gouvernementale pour l'exécution d'un programme ou projet.

Chapitre 3. – Des subsides

Art. 16.

A charge du budget de l'Etat, le ministre peut accorder à une organisation non gouvernementale agréée un subside destiné à la soutenir dans le financement de programmes ou projets précis dans le domaine de la promotion de la coopération au développement ainsi que d'actions de sensibilisation de l'opinion publique.

Art. 17.

Le ministre détermine les conditions d'octroi des subsides, la procédure applicable à la répartition des subsides ainsi que les modalités des versements des subsides accordés.

Pour pouvoir bénéficier des subsides, les actions de sensibilisation de l'opinion publique doivent:

– avoir comme objectif de sensibiliser l'opinion publique au Grand-Duché de Luxembourg sur des thèmes concernant les problèmes de développement durable dans les pays en développement et dans les relations entre les pays en développement et les pays industrialisés, notamment les problèmes concernant le commerce international équitable,

– être présentées en détail quant au lieu, quant aux groupes-cibles, quant au but et aux objectifs recherchés, quant aux moyens à mettre en oeuvre, quant au financement et quant au calendrier d'exécution,

– être gérées par des personnes suffisamment compétentes pour garantir une bonne exécution et une parfaite administration financière.

Chapitre 4. – De l'accord-cadre

Art. 18.

Le ministre peut conclure avec une organisation non gouvernementale agréée un accord-cadre de coopération. L'accord-cadre peut définir les modalités de coopération avec une organisation non gouvernementale dans une perspective pluriannuelle. Il peut contenir des arrangements au sujet du cofinancement, de la donation globale et des subsides.

Art. 19.

Le ministre détermine les conditions applicables à la conclusion d'un accord-cadre.

13.5. Law on other legal forms

There are no relevant laws on other legal forms.

13.6. Other laws

13.6.1. Law on the commercial register

The Law on the commercial register of 19 December 2002 "Loi du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises et modifiant certaines autres dispositions légales"[385].

Art. 1er

Il est tenu un registre de commerce et des sociétés, dans lequel sont immatriculés sur leur declaration ou sur la déclaration d'un mandataire:

1° les commerçants personnes physiques;

2° les sociétés commerciales;

3° les groupements d'intérêt économique;

4° les groupements européens d'intérêt économique;

[385] http://www.etat.lu/memorial/memorial/a/2002/a1493112.pdf, 14 December 2004.

5° les succursales créées au Grand-Duché de Luxembourg par des sociétés relevant du droit d'un autre Etat;

6° les sociétés civiles;

7° les associations sans but lucratif;

8° les fondations;

9° les associations d'épargne pension;

10° les associations agricoles;

11° les établissements publics de l'Etat et des communes;

12° les autres personnes morales dont l'immatriculation est prévue par la loi.

Les inscriptions prescrites par la loi de même que toute modification se rapportant aux faits dont la loi ordonne l'inscription doivent être portées sur le registre.

Le registre de commerce et des sociétés est public.

Art. 11

Toute association sans but lucratif, toute fondation, toute association agricole, toute association d'épargne-pension et tout établissement public est tenu de requérir son immatriculation. Celle-ci indique:

1° la dénomination;

2° l'objet;

3° la durée pour laquelle l'association, la fondation ou l'établissement public est constitué, lorsqu'elle n'est pas illimitée;

4° l'adresse précise du siège de l'association, de la fondation ou de l'établissement public;

5° les nom, prénoms, date et lieu de naissance ou, s'il s'agit de personnes morales, la dénomination sociale ou la raison sociale, et l'adresse privée ou professionnelle précise des personnes autorisées à gérer, administrer et signer pour l'association ou la fondation, ou des personnes membres de l'organe de gestion pour les établissements publics avec indication de la nature et de l'étendue de leurs pouvoirs;

s'il s'agit de personnes morales, le numéro d'immatriculation au registre de commerce et des sociétés doit être indiqué si la législation de l'Etat dont la société relève prévoit un tel numéro.

13.6.2. Income Tax

Rules concerning the Income Tax of entities "Collectivités soumises à l'impôt sur le revenu"[386].

La forme légale de la personnalité juridique ne constitue pas un critère déterminant pour l'imposabilité. En général, toute entité économique pouvant être bénéficiaire de revenus non soumis directement à l'impôt sur le revenu dans le chef de ses associés ou de ses membres est soumise à l'impôt sur le revenu des collectivités.

La loi énumère notamment les organismes à caractère collectif suivants:

1) les sociétés de capitaux, c'est-à-dire les sociétés anonymes, les sociétés en commandite par actions et les sociétés à responsabilité limitée;

2) les sociétés coopératives, les sociétés coopératives organisées comme des sociétés anonymes et les associations agricoles;

3) les congrégations et associations religieuses tant reconnues que non reconnues par l'Etat, quelle qu'en soit la forme juridique;

4) les associations d'assurances mutuelles, les associations d'épargne-pension et les fonds de pension visés par la loi modifiée du 6 décembre 1991 sur le secteur des assurances;

5) les établissements d'utilité publique et autres fondations;

6) les associations sans but lucratif;

7) les autres organismes de droit privé à caractère collectif, dont le revenu n'est pas imposable directement dans le chef d'un autre contribuable;

8) les patrimoines d'affectation et les patrimoines vacants;

9) les entreprises de nature commerciale, industrielle ou minière de l'Etat, des communes, des syndicats de communes, des établissements publics et des autres personnes morales de droit public.

Sous certaines conditions, les organismes mentionnés sous 2. et sous 4. à 9. sont exempts d'impôt.

[386] http://www.impotsdirects.public.lu/az/c/coll_impot_reven/index.html, 17 December 2004.

Les organismes énumérés sous 4. à 9. sont exempts si, d'après leurs statuts et leur activité, ils poursuivent directement et uniquement des buts cultuels, charitables ou d'intérêt général. Ils restent toutefois passibles de l'impôt dans la mesure où ils exercent une activité à caractère industriel ou commercial.

Par décision du Gouvernement en Conseil, prise sur avis du Ministre des Finances, certaines activités d'une association sans but lucratif ne sont toutefois pas considérées comme activités à caractère industriel et commercial, lorsque l'objet ou les objets en vue desquels l'association sans but lucratif est constituée, présente(nt) un intérêt public particulièrement accusé et lorsque l'association sans but lucratif ne cherche pas à procurer à ses membres un gain matériel.

La société en nom collectif, la société en commandite simple, le groupement d'intérêt économique, le groupement européen d'intérêt économique et la société civile (immobilière) ne sont, en principe, pas soumis à l'impôt sur le revenu des collectivités.

Du point de vue fiscal, ces sociétés sont fiscalement transparentes, c'est-à-dire elles sont dépourvues d'une personnalité juridique distincte de celle de leurs associés. Ces sociétés ne sont pas imposables, contrairement à leurs associés qui sont soumis à l'impôt sur le revenu du chef de leurs parts respectives dans le bénéfice établi en commun.

14. The Netherlands

14.1. Law on Associations

Associations are governed by the Civil Code "Burgerlijk Wetboek"[387].

Boek 2. Rechtspersonen

Titel 1. Algemene bepalingen

Artikel 1

1. De Staat, de provincies, de gemeenten, de waterschappen, alsmede alle lichamen waaraan krachtens de Grondwet verordenende bevoegdheid is verleend, bezitten rechtspersoonlijkheid.

2. Andere lichamen, waaraan een deel van de overheidstaak is opgedragen, bezitten slechts rechtspersoonlijkheid, indien dit uit het bij of krachtens de wet bepaalde volgt.

3. De volgende artikelen van deze titel, behalve artikel 5, gelden niet voor de in de voorgaande leden bedoelde rechtspersonen.

Artikel 2

1. Kerkgenootschappen alsmede hun zelfstandige onderdelen en lichamen waarin zij zijn verenigd, bezitten rechtspersoonlijkheid.

2. Zij worden geregeerd door hun eigen statuut, voor zover dit niet in strijd is met de wet. Met uitzondering van artikel 5 gelden de volgende artikelen van deze titel niet voor hen; overeenkomstige toepassing daarvan is geoorloofd, voor zover deze is te verenigen met hun statuut en met de aard der onderlinge verhoudingen.

Artikel 3

Verenigingen, coöperaties, onderlinge waarborgmaatschappijen, naamloze vennootschappen, besloten vennootschappen met beperkte aansprakelijkheid en stichtingen bezitten rechtspersoonlijkheid.

Artikel 4

1. Een rechtspersoon ontstaat niet bij het ontbreken van een door een notaris ondertekende akte of een verklaring van geen bezwaar, voor zover door de wet voor de totstandkoming vereist. Het ontbreken van kracht van authenticiteit aan een door een notaris ondertekende akte verhindert het ontstaan van de rechtspersoon slechts, indien die rechtspersoon in een bij die akte gemaakte uiterste wilsbeschikking in het leven zou zijn geroepen.

2. Vernietiging van de rechtshandeling waardoor een rechtspersoon is ontstaan, tast diens bestaan niet aan. Het vervallen van de deelneming van een of meer oprichters van een rechtspersoon heeft op zichzelf geen invloed op de rechtsgeldigheid van de deelneming der overblijvende oprichters.

3. Is ten name van een niet bestaande rechtspersoon een vermogen gevormd, dan benoemt de rechter op verzoek van een belanghebbende of het openbaar ministerie een of meer vereffenaars. Artikel 22 is van overeenkomstige toepassing.

[387] http://wetten.overheid.nl/cgi-bin/sessioned/browsercheck/continuation=12412-002/session=561206364260175/action=javascript-result/javascript=yes, 3 March 2005.

4. Het vermogen wordt vereffend als dat van een ontbonden rechtspersoon in de voorgewende rechtsvorm. Degenen die zijn opgetreden als bestuurders, zijn hoofdelijk verbonden voor de tot dit vermogen behorende schulden die opeisbaar zijn geworden in het tijdvak waarin zij dit deden. Zij zijn eveneens verbonden voor de schulden die voortspruiten uit in die tijd ten behoeve van dit vermogen verrichte rechtshandelingen, voor zover daarvoor niemand ingevolge de vorige zin verbonden is. Ontbreken personen die ingevolge de vorige twee zinnen verbonden zijn, dan zijn degenen die handelden, hoofdelijk verbonden.

5. Indien alsnog een rechtspersoon wordt opgericht ter opvolging in het vermogen, kan de rechter desverzocht toestaan dat dit niet wordt vereffend, doch dat het in die rechtspersoon wordt ingebracht.

Artikel 5

Een rechtspersoon staat wat het vermogensrecht betreft, met een natuurlijk persoon gelijk, tenzij uit de wet het tegendeel voortvloeit.

Artikel 6

1. Op wijzigingen in statuten en reglementen en op ontbinding van de rechtspersoon, die krachtens dit boek moeten worden openbaar gemaakt, kan voordat deze openbaarmakingen en, in geval van statutenwijziging, de voorgeschreven openbaarmaking van de gewijzigde statuten zijn geschied, geen beroep worden gedaan tegen een wederpartij en derden die daarvan onkundig waren.

2. Een door de wet toegelaten beroep op statutaire onbevoegdheid van het bestuur of van een bestuurder tot vertegenwoordiging van de rechtspersoon bij een rechtshandeling kan tegen een wederpartij die daarvan onkundig was, niet worden gedaan, indien de beperking of uitsluiting van de bevoegdheid niet ten tijde van het verrichten van die rechtshandeling op de door de wet voorgeschreven wijzen was openbaar gemaakt. Hetzelfde geldt voor een beroep op een beperking van de vertegenwoordigingsbevoegdheid van anderen dan bestuurders, aan wie die bevoegdheid bij de statuten is toegekend.

3. De rechtspersoon kan tegen een wederpartij die daarvan onkundig was, niet de onjuistheid of onvolledigheid van de in het register opgenomen gegevens inroepen. Juiste en volledige inschrijving elders of openbaarmaking van de statuten is op zichzelf niet voldoende bewijs dat de wederpartij van de onjuistheid of onvolledigheid niet onkundig was.

4. Voor zover de wet niet anders bepaalt, kan de wederpartij van een rechtspersoon zich niet beroepen op onbekendheid met een feit dat op een door de wet aangegeven wijze is openbaar gemaakt, tenzij die openbaarmaking niet is geschied op elke wijze die de wet vereist of daarvan niet de voorgeschreven mededeling is gedaan.

5. De beide vorige leden gelden niet voor rechterlijke uitspraken die in het faillissementsregister of het surséanceregister zijn ingeschreven.

Artikel 7

Een door een rechtspersoon verrichte rechtshandeling is vernietigbaar, indien daardoor het doel werd overschreden en de wederpartij dit wist of zonder eigen onderzoek moest weten; slechts de rechtspersoon kan een beroep op deze grond tot vernietiging doen.

Artikel 8

1. Een rechtspersoon en degenen die krachtens de wet en de statuten bij zijn organisatie zijn betrokken, moeten zich als zodanig jegens elkander gedragen naar hetgeen door redelijkheid en billijkheid wordt gevorderd.

2. Een tussen hen krachtens wet, gewoonte, statuten, reglementen of besluit geldende regel is niet van toepassing voor zover dit in de gegeven omstandigheden naar maatstaven van redelijkheid en billijkheid onaanvaardbaar zou zijn.

Artikel 9

Elke bestuurder is tegenover de rechtspersoon gehouden tot een behoorlijke vervulling van de hem opgedragen taak. Indien het een aangelegenheid betreft die tot de werkkring van twee of meer bestuurders behoort, is ieder van hen voor het geheel aansprakelijk terzake van een tekortkoming, tenzij deze niet aan hem is te wijten en hij niet nalatig is geweest in het treffen van maatregelen om de gevolgen daarvan af te wenden.

Artikel 10

1. Het bestuur is verplicht van de vermogenstoestand van de rechtspersoon en van alles betreffende de werkzaamheden van de rechtspersoon, naar de eisen die voortvloeien uit deze werkzaamheden, op zodanige wijze een administratie te voeren en de daartoe behorende boeken, bescheiden en andere gegevensdragers op zodanige wijze te bewaren, dat te allen tijde de rechten en verplichtingen van de rechtspersoon kunnen worden gekend.

2. Onverminderd het bepaalde in de volgende titels is het bestuur verplicht jaarlijks binnen zes maanden na afloop van het boekjaar de balans en de staat van baten en lasten van de rechtspersoon te maken en op papier te stellen.

3. Het bestuur is verplicht de in de leden 1 en 2 bedoelde boeken, bescheiden en andere gegevensdragers gedurende zeven jaren te bewaren.

4. De op een gegevensdrager aangebrachte gegevens, uitgezonderd de op papier gestelde balans en staat van baten en lasten, kunnen op een andere gegevensdrager worden overgebracht en bewaard, mits de overbrenging geschiedt met juiste en volledige weergave der gegevens en deze gegevens gedurende de volledige bewaartijd beschikbaar zijn en binnen redelijke tijd leesbaar kunnen worden gemaakt.

Artikel 10a

Het boekjaar van een rechtspersoon is het kalenderjaar, indien in de statuten geen ander boekjaar is aangewezen.

Artikel 11

De aansprakelijkheid van een rechtspersoon als bestuurder van een andere rechtspersoon rust tevens hoofdelijk op ieder die ten tijde van het ontstaan van de aansprakelijkheid van de rechtspersoon daarvan bestuurder is.

Artikel 12

Het stemrecht over besluiten waarbij de rechtspersoon aan bepaalde personen, anders dan in hun hoedanigheid van lid, aandeelhouder of lid van een orgaan, rechten toekent of verplichtingen kwijtscheldt, kan door de statuten aan die personen en aan hun echtgenoot, geregistreerde partner, en bloedverwanten in de rechte lijn worden ontzegd.

Artikel 13

1. Een stem is nietig in de gevallen waarin een eenzijdige rechtshandeling nietig is; een stem kan niet worden vernietigd.

2. Een onbekwame die lid is van een vereniging, kan zijn stemrecht daarin zelf uitoefenen, voor zover de statuten zich daartegen niet verzetten; in andere gevallen komt de uitoefening van het stemrecht toe aan zijn wettelijke vertegenwoordiger.

3. Tenzij de statuten anders bepalen, is het in de vergadering van een orgaan van een rechtspersoon uitgesproken oordeel van de voorzitter omtrent de uitslag van een stemming beslissend. Hetzelfde geldt voor de inhoud van een genomen besluit, voor zover werd gestemd over een niet schriftelijk vastgelegd voorstel.

4. Wordt onmiddellijk na het uitspreken van het oordeel van de voorzitter de juistheid daarvan betwist, dan vindt een nieuwe stemming plaats, indien de meerderheid der vergadering of, indien de oorspronkelijke stemming niet hoofdelijk of schriftelijk geschiedde, een stemgerechtigde aanwezige dit verlangt. Door deze nieuwe stemming vervallen de rechtsgevolgen van de oorspronkelijke stemming.

Artikel 14

1. Een besluit van een orgaan van een rechtspersoon, dat in strijd is met de wet of de statuten, is nietig, tenzij uit de wet iets anders voortvloeit.

2. Is een besluit nietig, omdat het is genomen ondanks het ontbreken van een door de wet of de statuten voorgeschreven voorafgaande handeling van of mededeling aan een ander dan het orgaan dat het besluit heeft genomen, dan kan het door die ander worden bekrachtigd. Is voor de ontbrekende handeling een vereiste gesteld, dan geldt dat ook voor de bekrachtiging.

3. Bekrachtiging is niet meer mogelijk na afloop van een redelijke termijn, die aan de ander is gesteld door het orgaan dat het besluit heeft genomen of door de wederpartij tot wie het was gericht.

Artikel 15

1. Een besluit van een orgaan van een rechtspersoon is, onverminderd het elders in de

wet omtrent de mogelijkheid van een vernietiging bepaalde, vernietigbaar:

a. wegens strijd met wettelijke of statutaire bepalingen die het tot stand komen van besluiten regelen;

b. wegens strijd met de redelijkheid en billijkheid die door artikel 8 worden geëist;

c. wegens strijd met een reglement.

2. Tot de bepalingen als bedoeld in het vorige lid onder a, behoren niet die welke de voorschriften bevatten waarop in artikel 14 lid 2 wordt gedoeld.

3. Vernietiging geschiedt door een uitspraak van de rechtbank van de woonplaats van de rechtspersoon:

a. op een vordering tegen de rechtspersoon van iemand die een redelijk belang heeft bij de naleving van de verplichting die niet is nagekomen, of

b. op vordering van de rechtspersoon zelf, ingesteld krachtens bestuursbesluit tegen degene die door de voorzieningenrechter van de rechtbank is aangewezen op een daartoe gedaan verzoek van de rechtspersoon; in dat geval worden de kosten van het geding door de rechtspersoon gedragen.

4. Indien een bestuurder in eigen naam de vordering instelt, verzoekt de rechtspersoon de voorzieningenrechter van de rechtbank iemand aan te wijzen, die terzake van het geding in de plaats van het bestuur treedt.

5. De bevoegdheid om vernietiging van het besluit te vorderen, vervalt een jaar na het einde van de dag, waarop hetzij aan het besluit voldoende bekendheid is gegeven, hetzij de belanghebbende van het besluit kennis heeft genomen of daarvan is verwittigd.

6. Een besluit dat vernietigbaar is op grond van lid 1 onder a, kan door een daartoe strekkend besluit worden bevestigd; voor dit besluit gelden de zelfde vereisten als voor het te bevestigen besluit. De bevestiging werkt niet zolang een tevoren ingestelde vordering tot vernietiging aanhangig is. Indien de vordering wordt toegewezen, geldt het vernietigde besluit als opnieuw genomen door het latere besluit, tenzij uit de strekking van dit besluit het tegendeel voortvloeit.

Artikel 16

1. De onherroepelijke uitspraak die de nietigheid van een besluit van een rechtspersoon vaststelt of die zulk een besluit vernietigt, is voor een ieder, behoudens herroeping of derdenverzet, bindend, indien de rechtspersoon partij in het geding is geweest. Herroeping komt ieder lid of aandeelhouder toe.

2. Is het besluit een rechtshandeling van de rechtspersoon, die tot een wederpartij is gericht, of is het een vereiste voor de geldigheid van zulk een rechtshandeling, dan kan de nietigheid of vernietiging van het besluit niet aan die wederpartij worden tegengeworpen, indien deze het gebrek dat aan het besluit kleefde, kende noch behoefde te kennen. Niettemin kan de nietigheid of vernietiging van een besluit tot benoeming van een bestuurder of een commissaris aan de benoemde worden tegengeworpen; de rechtspersoon vergoedt echter diens schade, indien hij het gebrek in het besluit kende noch behoefde te kennen.

Artikel 17

Een rechtspersoon wordt opgericht voor onbepaalde tijd.

Artikel 18

1. Een rechtspersoon kan zich met inachtneming van de volgende leden omzetten in een andere rechtsvorm.

2. Voor omzetting zijn vereist:

a. een besluit tot omzetting, genomen met inachtneming van de vereisten voor een besluit tot statutenwijziging en, tenzij een stichting zich omzet, genomen met de stemmen van ten minste negen tienden van de uitgebrachte stemmen;

b. een besluit tot wijziging van de statuten;

c. een notariële akte van omzetting die de nieuwe statuten bevat.

3. De in het vorige lid onder a genoemde meerderheid is niet vereist voor een omzetting van een naamloze vennootschap in een besloten vennootschap of omgekeerd.

4. Voor de omzetting van of in een stichting en van een naamloze of besloten vennootschap in een vereniging is bovendien rechterlijke machtiging vereist.

5. Slechts de rechtspersoon kan machtiging tot omzetting verzoeken aan de rechtbank, onder overlegging van een notarieel ontwerp van de akte. Zij wordt in elk geval geweigerd, indien een

vereist besluit nietig is of indien een rechtsvordering tot vernietiging daarvan aanhangig is. Zij wordt geweigerd, indien de belangen van stemgerechtdigden die niet hebben ingestemd of van anderen van wie ten minste iemand zich tot de rechter heeft gewend, onvoldoende zijn ontzien. Indien voor de omzetting machtiging van de rechter is vereist, verklaart de notaris in de akte van omzetting dat de machtiging op het ontwerp van de akte is verleend.

6. Na omzetting van een stichting moet uit de statuten blijken dat het vermogen dat zij bij de omzetting heeft en de vruchten daarvan slechts met toestemming van de rechter anders mogen worden besteed dan voor de omzetting was voorgeschreven. Hetzelfde geldt voor de statuten van een rechtspersoon voor zover dit vermogen en deze vruchten daarop krachtens fusie of splitsing zijn overgegaan.

7. De rechtspersoon doet opgave van de omzetting ter inschrijving in de registers waarin hij moet zijn en moet worden ingeschreven dan wel als vereniging vrijwillig is ingeschreven.

8. Omzetting beëindigt het bestaan van de rechtspersoon niet.

Artikel 19

1. Een rechtspersoon wordt ontbonden:

a. door een besluit van de algemene vergadering of, indien de rechtspersoon een stichting is, door een besluit van het bestuur tenzij in de statuten anders is voorzien;

b. bij het intreden van een gebeurtenis die volgens de statuten de ontbinding tot gevolg heeft, en die niet een besluit of een op ontbinding gerichte handeling is;

c. na faillietverklaring door hetzij opheffing van het faillissement wegens de toestand van de boedel, hetzij door insolventie;

d. door het geheel ontbreken van leden, indien de rechtspersoon een vereniging, een coöperatie of een onderlinge waarborgmaatschappij is;

e. door een beschikking van de Kamer van Koophandel en Fabrieken als bedoeld in artikel 19a;

f. door de rechter in de gevallen die de wet bepaalt.

2. De rechtbank verklaart op verzoek van het bestuur, een belanghebbende of het openbaar ministerie, of en op welk tijdstip de rechtspersoon is ontbonden in een geval als bedoeld in lid 1 onder b of d. De beschikking is voor een ieder bindend. Is de rechtspersoon in een register ingeschreven, dan wordt de in kracht van gewijsde gegane uitspraak, inhoudende de verklaring, door de zorg van de griffier aldaar ingeschreven.

3. Aan de registers waar de rechtspersoon is ingeschreven wordt van de ontbinding opgaaf gedaan: in de gevallen als bedoeld in lid 1, onder a, b en d door de vereffenaar, indien deze er is en anders door het bestuur, in het geval als bedoeld in lid 1, onder c door de faillissementscurator, in het geval als bedoeld in lid 1, onder e door de Kamer van Koophandel en Fabrieken en in het geval als bedoeld in lid 1 onder f door de griffier van het betrokken gerecht.

4. Indien de rechtspersoon op het tijdstip van zijn ontbinding geen baten meer heeft, houdt hij alsdan op te bestaan. In dat geval doet het bestuur of, bij toepassing van artikel 19a , de Kamer van Koophandel en Fabrieken, daarvan opgaaf aan de registers waar de rechtspersoon is ingeschreven.

5. De rechtspersoon blijft na ontbinding voortbestaan voor zover dit tot vereffening van zijn vermogen nodig is. In stukken en aankondigingen die van hem uitgaan, moet aan zijn naam worden toegevoegd: in liquidatie.

6. De rechtspersoon houdt in geval van vereffening op te bestaan op het tijdstip waarop de vereffening eindigt. De vereffenaar of de faillissementscurator doet aan de registers waar de rechtspersoon is ingeschreven, daarvan opgaaf.

7. De gegevens die omtrent de rechtspersoon in de registers zijn opgenomen op het tijdstip waarop hij ophoudt te bestaan, blijven daar gedurende tien jaren na dat tijdstip bewaard.

Artikel 19a

1. Een in het handelsregister ingeschreven naamloze vennootschap, besloten vennootschap met beperkte aansprakelijkheid, coöperatie of onderlinge waarborgmaatschappij wordt door een beschikking van de Kamer van Koophandel en Fabrieken, waar die rechtspersoon is ingeschreven, ontbonden, indien de Kamer is gebleken dat ten minste twee van de hiernavolgende omstandigheden zich voordoen:

a. de rechtspersoon heeft het voor zijn inschrijving in het handelsregister of voor de inschrijving van een aan hem toebehorende

onderneming verschuldigde bedrag niet voldaan gedurende ten minste een jaar na de datum waarvoor hij dat bedrag had moeten voldoen;

b. er staan gedurende ten minste een jaar geen bestuurders van de rechtspersoon in het register ingeschreven, terwijl ook geen opgaaf tot inschrijving is gedaan, dan wel er doet zich, indien er wel bestuurders staan ingeschreven, met betrekking tot alle ingeschreven bestuurders een van de navolgende omstandigheden voor:

1°bestuurder is overleden,

2°de bestuurder is ten minste een jaar niet bereikbaar gebleken op het in het register vermelde adres, en evenmin op het in de gemeentelijke basisadministratie persoonsgegevens ingeschreven adres, dan wel in die administratie staat ten minste een jaar geen adres van de bestuurder vermeld;

c. de rechtspersoon is ten minste een jaar in gebreke met de nakoming van de verplichting tot openbaarmaking van de jaarrekening of de balans en de toelichting overeenkomstig de artikelen 394, 396 of 397;

d. de rechtspersoon heeft ten minste een jaar geen gevolg gegeven aan een aanmaning als bedoeld in artikel 9, lid 3 van de Algemene wet inzake rijksbelastingen tot het doen van aangifte voor de vennootschapsbelasting.

2. Een in het handelsregister ingeschreven vereniging of stichting, die niet een onderneming drijft die in het handelsregister staat ingeschreven, wordt door een beschikking van de Kamer van Koophandel en Fabrieken, waar de rechtspersoon is ingeschreven, ontbonden, indien de Kamer is gebleken dat de omstandigheid, genoemd in het lid 1 onder b, zich voordoet en zij ten minste een jaar in gebreke is het voor inschrijving in het handelsregister verschuldigde bedrag te voldoen.

3. Indien de Kamer op grond van haar bekende gegevens gebleken is dat een rechtspersoon als bedoeld in de leden 1 en 2 voor ontbinding in aanmerking komt, deelt zij de rechtspersoon en de ingeschreven bestuurders bij aangetekende brief aan hun laatst bekende adres mee, dat zij voornemens is tot ontbinding van de rechtspersoon over te gaan, met vermelding van de omstandigheden waarop het voornemen is gegrond. De Kamer schrijft deze mededeling in het register. Als de omstandigheid, bedoeld in lid 1, onder b zich voordoet, doet de Kamer van het voornemen tot ontbinding tevens een mededeling opnemen in de Nederlandse Staatscourant. Voor zover de kosten van deze publikatie niet uit het vermogen van de rechtspersoon kunnen worden voldaan, komen deze ten laste van Onze Minister van Justitie.

4. Na verloop van acht weken na de dagtekening van de aangetekende brief ontbindt de Kamer de rechtspersoon bij beschikking, tenzij voordien is gebleken dat de omstandigheden die ingevolge het derde lid zijn vermeld, zich niet of niet meer voordoen.

5. De beschikking wordt bekend gemaakt aan de rechtspersoon en de ingeschreven bestuurders.

6. De Kamer doet van de ontbinding een mededeling opnemen in de Nederlandse Staatscourant. Lid 3, vierde zin, is van overeenkomstige toepassing.

7. Als op grond van artikel 23, lid 1 geen vereffenaars kunnen worden aangewezen, treedt de Kamer op als vereffenaar van het vermogen van de ontbonden rechtspersoon, behoudens het bepaalde in artikel 19, lid 4. Op verzoek van de Kamer benoemt de rechtbank in haar plaats een of meer andere vereffenaars.

8. Indien tegen een beschikking als bedoeld in lid 4, beroep wordt ingesteld bij het College van Beroep voor het bedrijfsleven schrijft de Kamer dat in het register in. De beslissing op het beroep wordt tevens ingeschreven. Indien de beslissing strekt tot vernietiging van de beschikking doet de Kamer een mededeling daarvan opnemen in de Nederlandse Staatscourant. Gedurende het tijdvak waarin de rechtspersoon na de beschikking tot ontbinding had opgehouden te bestaan, is er een verlengingsgrond als bedoeld in artikel 320 van Boek 3 ten aanzien van de verjaring van rechtsvorderingen van of tegen de rechtspersoon.

Artikel 20

1. Een rechtspersoon waarvan de werkzaamheid in strijd is met de openbare orde, wordt door de rechtbank op verzoek van het openbaar ministerie verboden verklaard en ontbonden.

2. Een rechtspersoon waarvan het doel in strijd is met de openbare orde, wordt door de rechtbank op verzoek van het openbaar ministerie ontbonden. Alvorens de ontbinding uit te spreken kan de rechtbank de rechtspersoon in de gelegenheid stellen binnen een door haar te bepalen termijn zijn doel zodanig te wijzigen dat het niet meer in strijd is met de openbare orde.

Artikel 21

1. De rechtbank ontbindt een rechtspersoon, indien:

a. aan zijn totstandkoming gebreken kleven;

b. zijn statuten niet aan de eisen der wet voldoen;

c. hij niet onder de wettelijke omschrijving van zijn rechtsvorm valt.

2. De rechtbank ontbindt de rechtspersoon niet, indien zij hem een termijn vergund heeft en hij na afloop daarvan een rechtspersoon is die aan de eisen van de wet voldoet.

3. De rechtbank kan een rechtspersoon ontbinden, indien deze de in dit boek voor zijn rechtsvorm gestelde verboden overtreedt of in ernstige mate in strijd met zijn statuten handelt.

4. De ontbinding wordt uitgesproken op verzoek van een belanghebbende of het openbaar ministerie.

Artikel 22

1. De rechter voor wie een verzoek tot ontbinding van de rechtspersoon aanhangig is, kan de goederen van die rechtspersoon desverlangd onder bewind stellen; de beschikking vermeldt het tijdstip waarop zij in werking treedt.

2. De rechter benoemt bij zijn beschikking een of meer bewindvoerders, en regelt hun bevoegdheden en hun beloning.

3. Voor zover de rechter niet anders bepaalt, kunnen de organen van de rechtspersoon zonder voorafgaande goedkeuring van de bewindvoerder geen besluiten nemen en kunnen vertegenwoordigers van de rechtspersoon zonder diens medewerking geen rechtshandelingen verrichten.

4. De beschikking kan te allen tijde door de rechter worden gewijzigd of ingetrokken; het bewind eindigt in ieder geval, zodra de uitspraak op het verzoek tot ontbinding in kracht van gewijsde gaat.

5. De bewindvoerder doet aan de registers waar de rechtspersoon is ingeschreven, opgaaf van de beschikking en van de gegevens over zichzelf die omtrent een bestuurder worden verlangd.

6. Een rechtshandeling die de rechtspersoon ondanks zijn uit het bewind voortvloeiende onbevoegdheid vóór de inschrijving heeft verricht, is niettemin geldig, indien de wederpartij het bewind kende noch behoorde te kennen.

Artikel 22a

1. Voor of bij het doen van een verzoek door het openbaar ministerie tot ontbinding van een naamloze vennootschap of een besloten vennootschap met beperkte aansprakelijkheid, kan het openbaar ministerie de rechter bij verzoekschrift vragen te bevelen dat, tot de uitspraak op genoemd verzoek in kracht van gewijsde gaat, aan de aandeelhouders de bevoegdheid tot het vervreemden, verpanden of met vruchtgebruik belasten van aandelen wordt ontzegd.

2. De rechter beslist na summier onderzoek. Het bevel wordt gegeven onder voorwaarde dat het instellen van het verzoek tot ontbinding geschiedt binnen een door de rechter daartoe te bepalen termijn. Tegen deze beschikking is geen hogere voorziening toegelaten.

3. De beschikking wordt onverwijld, zo mogelijk op dezelfde dag, betekend aan de aandeelhouders en de vennootschap. De griffier draagt zorg voor de inschrijving van de beschikking in het register waarin de rechtspersoon is ingeschreven.

4. Binnen acht dagen na de betekening in het vorige lid vermeld kunnen de aandeelhouders tegen de beschikking in verzet komen. Het verzet schorst het bevel niet, behoudens de bevoegdheid van de aandeelhouders om daarop in kort geding door de president van de rechtbank te doen beslissen. Verzet tegen de beschikking kan niet gegrond zijn op de bewering dat de aandeelhouder zijn aandelen wil overdragen.

5. Het verzoek tot ontbinding moet binnen acht dagen nadat deze is ingesteld aan de aandeelhouder worden betekend.

Artikel 23

1. Voor zover de rechter geen andere vereffenaars heeft benoemd en de statuten geen andere vereffenaars aanwijzen, worden de bestuurders vereffenaars van het vermogen van een ontbonden rechtspersoon. Op vereffenaars die niet door de rechter worden benoemd, zijn de bepalingen omtrent de benoeming, de schorsing, het ontslag en het toezicht op bestuurders van toepassing, voor zover de statuten niet anders bepalen. Het vermogen van een door de rechter ontbonden rechtspersoon wordt vereffend door een of meer door hem te benoemen vereffenaars.

2. Ontslaat de rechter een vereffenaar, dan kan hij een of meer andere benoemen. Ontbreken vereffenaars, dan benoemt de rechtbank een of

meer vereffenaars op verzoek van een belanghebbende of het openbaar ministerie. De vereffenaar die door de rechter is benoemd, heeft recht op de beloning welke deze hem toekent.

3. Een benoeming tot vereffenaar door de rechter gaat in daags nadat de griffier de benoeming aan de vereffenaar heeft meegedeeld; de griffier doet de mededeling terstond, indien de beslissing die de benoeming inhoudt, bij voorraad uitvoerbaar is en anders, zodra zij in kracht van gewijsde is gegaan.

4. Iedere vereffenaar doet aan de registers waar de rechtspersoon is ingeschreven, opgaaf van zijn optreden als zodanig en van de gegevens over zichzelf die van een bestuurder worden verlangd.

5. De rechtbank kan een vereffenaar met ingang van een door haar bepaalde dag ontslaan, het zij op diens verzoek, hetzij wegens gewichtige redenen op verzoek van een medevereffenaar, het openbaar ministerie of ambtshalve.

6. De ontslagen vereffenaar legt rekening en verantwoording af aan degenen die de vereffening voortzetten. Is de opvolger door de rechter benoemd, dan geschiedt de rekening en verantwoording ten overstaan van de rechter.

Artikel 23a

1. Een vereffenaar heeft, tenzij de statuten anders bepalen, dezelfde bevoegdheden, plichten en aansprakelijkheid als een bestuurder, voor zover deze verenigbaar zijn met zijn taak als vereffenaar.

2. Zijn er twee of meer vereffenaars, dan kan ieder van hen alle werkzaamheden verrichten, tenzij anders is bepaald. Bij verschil van mening tussen de vereffenaars beslist op verzoek van een hunner de rechter die bij de vereffening is betrokken, en anders de kantonrechter. De rechter bedoeld in de vorige zin, kan ook een verdeling van het loon vaststellen.

3. Zowel de rechtbank als een door haar in de vereffening benoemde rechter-commissaris kan voor de vereffening nodige bevelen geven, al dan niet in de vorm van een bevelschrift in executoriale vorm. De vereffenaar is verplicht hun aanwijzingen op te volgen. Tegen de bevelen en aanwijzingen staan geen rechtsmiddelen open.

4. Blijkt de vereffenaar dat de schulden de baten vermoedelijk zullen overtreffen, dan doet hij aangifte tot faillietverklaring, tenzij alle bekende schuldeisers desgevraagd instemmen met voortzetting van de vereffening buiten faillissement.

5. De voorgaande bepalingen van dit artikel en de artikelen 23b-23c zijn niet van toepassing op vereffening in faillissement.

Artikel 23b

1. De vereffenaar draagt hetgeen na de voldoening der schuldeisers van het vermogen van de ontbonden rechtspersoon is overgebleven, in verhouding tot ieders recht over aan hen die krachtens de statuten daartoe zijn gerechtigd, of anders aan de leden of aandeelhouders. Heeft geen ander recht op het overschot, dan keert hij het uit aan de Staat, die het zoveel mogelijk overeenkomstig het doel van de rechtspersoon besteedt.

2. De vereffenaar stelt een rekening en verantwoording op van de vereffening, waaruit de omvang en samenstelling van het overschot blijken. Zijn er twee of meer gerechtigden tot het overschot, dan stelt de vereffenaar een plan van verdeling op dat de grondslagen der verdeling bevat.

3. Voor zover tot het overschot iets anders dan geld behoort en de statuten of een rechterlijke beschikking geen nadere aanwijzing behelzen, komen als wijzen van verdeling in aanmerking:

a. toedeling van een gedeelte van het overschot aan ieder der gerechtigden;

b. overbedeling aan een of meer gerechtigden tegen vergoeding van de overwaarde;

c. verdeling van de netto-opbrengst na verkoop.

4. De vereffenaar legt de rekening en verantwoording en het plan van verdeling neer ten kantore van de registers waarin de rechtspersoon is ingeschreven, en in elk geval ten kantore van de rechtspersoon, als dat er is, of op een andere plaats in het arrondissement waar de rechtspersoon woonplaats heeft. De stukken liggen daar twee maanden voor ieder ter inzage. De vereffenaar maakt in een nieuwsblad bekend waar en tot wanneer zij ter inzage liggen. De rechter kan aankondiging in de Staatscourant bevelen.

5. Binnen twee maanden nadat de rekening en verantwoording en het plan zijn neergelegd en de nederlegging overeenkomstig lid 4 is bekendgemaakt en aangekondigd, kan iedere schuldeiser of gerechtigde daartegen door een verzoekschrift aan de rechtbank in verzet komen. De vereffenaar doet van gedaan verzet mededeling op de zelfde wijze als waarop de nederlegging van de rekening en verantwoording en het plan van verdeling zijn medegedeeld.

6. Telkens wanneer de stand van het vermogen daartoe aanleiding geeft, kan de vereffenaar een uitkering bij voorbaat aan de gerechtigden doen. Na de aanvang van de verzettermijn doet hij dit niet zonder machtiging van de rechter.

7. Zodra de intrekking van of beslissing op elk verzet onherroepelijk is, deelt de vereffenaar dit mede op de wijze waarop het verzet is medegedeeld. Brengt de beslissing wijziging in het plan van verdeling, dan wordt ook het gewijzigde plan van verdeling op deze wijze meegedeeld.

8. De vereffenaar consigneert geldbedragen waarover niet binnen zes maanden na de laatste betaalbaarstelling is beschikt.

9. De vereffening eindigt op het tijdstip waarop geen aan de vereffenaar bekende baten meer aanwezig zijn.

10. Na verloop van een maand nadat de vereffening is geëindigd, doet de vereffenaar rekening en verantwoording van zijn beheer aan de rechter, indien deze bij de vereffening is betrokken.

Artikel 23c

1. Indien na het tijdstip waarop de rechtspersoon is opgehouden te bestaan nog een schuldeiser of gerechtigde tot het saldo opkomt of van het bestaan van een bate blijkt, kan de rechtbank op verzoek van een belanghebbende de vereffening heropenen en zo nodig een vereffenaar benoemen. In dat geval herleeft de rechtspersoon, doch uitsluitend ter afwikkeling van de heropende vereffening. De vereffenaar is bevoegd van elk der gerechtigden terug te vorderen hetgeen deze te veel uit het overschot heeft ontvangen.

2. Gedurende het tijdvak waarin de rechtspersoon had opgehouden te bestaan, is er een verlengingsgrond als bedoeld in artikel 320 van Boek 3 ten aanzien van de verjaring van rechtsvorderingen van of tegen de rechtspersoon.

Artikel 24

1. De boeken, bescheiden en andere gegevensdragers van een ontbonden rechtspersoon moeten worden bewaard gedurende zeven jaren nadat de rechtspersoon heeft opgehouden te bestaan. Bewaarder is degene die bij of krachtens de statuten, dan wel door de algemene vergadering of, als de rechtspersoon een stichting was, door het bestuur als zodanig is aangewezen.

2. Ontbreekt een bewaarder en is de laatste vereffenaar niet bereid te bewaren, dan wordt een bewaarder, zo mogelijk uit de kring dergenen die bij de rechtspersoon waren betrokken, op verzoek van een belanghebbende benoemd door de kantonrechter van de rechtbank van het arrondissement waarin de rechtspersoon woonplaats had. Rechtsmiddelen staan niet open.

3. Binnen acht dagen na het ingaan van zijn bewaarplicht moet de bewaarder zijn naam en adres opgeven aan de registers waarin de ontbonden rechtspersoon was ingeschreven.

4. De in lid 2 genoemde kantonrechter kan desverzocht machtiging tot raadpleging van de boeken, bescheiden en andere gegevensdragers geven aan iedere belanghebbende, indien de rechtspersoon een stichting was, en overigens aan ieder die aantoont bij inzage een redelijk belang te hebben in zijn hoedanigheid van voormalig lid of aandeelhouder van de rechtspersoon of houder van certificaten van diens aandelen, dan wel als rechtverkrijgende van een zodanige persoon.

Artikel 24a

1. Dochtermaatschappij van een rechtspersoon is:

a. een rechtspersoon waarin de rechtspersoon of een of meer van zijn dochtermaatschappijen, al dan niet krachtens overeenkomst met andere stemgerechtigden, alleen of samen meer dan de helft van de stemrechten in de algemene vergadering kunnen uitoefenen;

b. een rechtspersoon waarvan de rechtspersoon of een of meer van zijn dochtermaatschappijen lid of aandeelhouder zijn en, al dan niet krachtens overeenkomst met andere stemgerechtigden, alleen of samen meer dan de helft van de bestuurders of van de commissarissen kunnen benoemen of ontslaan, ook indien alle stemgerechtigden stemmen.

2. Met een dochtermaatschappij wordt gelijk gesteld een onder eigen naam optredende vennootschap waarin de rechtspersoon of een of meer dochtermaatschappijen als vennoot volledig jegens schuldeisers aansprakelijk is voor de schulden.

3. Voor de toepassing van lid 1 worden aan aandelen verbonden rechten niet toegerekend aan degene die de aandelen voor rekening van anderen houdt. Aan aandelen verbonden rechten worden toegerekend aan degene voor wiens rekening de aandelen worden gehouden, indien deze bevoegd is te bepalen hoe de rechten worden uitgeoefend dan wel zich de aandelen te verschaffen.

4. Voor de toepassing van lid 1 worden stemrechten, verbonden aan verpande aandelen, toegerekend aan de pandhouder, indien hij mag bepalen hoe de rechten worden uitgeoefend. Zijn de aandelen evenwel verpand voor een lening die de pandhouder heeft verstrekt in de gewone uitoefening van zijn bedrijf, dan worden de stemrechten hem slechts toegerekend, indien hij deze in eigen belang heeft uitgeoefend.

Artikel 24b

Een groep is een economische eenheid waarin rechtspersonen en vennootschappen organisatorisch zijn verbonden. Groepsmaatschappijen zijn rechtspersonen en vennootschappen die met elkaar in een groep zijn verbonden.

Artikel 24c

1. Een rechtspersoon of vennootschap heeft een deelneming in een rechtspersoon, indien hij of een of meer van zijn dochtermaatschappijen alleen of samen voor eigen rekening aan die rechtspersoon kapitaal verschaffen of doen verschaffen teneinde met die rechtspersoon duurzaam verbonden te zijn ten dienste van de eigen werkzaamheid. Indien een vijfde of meer van het geplaatste kapitaal wordt verschaft, wordt het bestaan van een deelneming vermoed.

2. Een rechtspersoon heeft een deelneming in een vennootschap, indien hij of een dochtermaatschappij:

a. daarin als vennoot jegens schuldeisers volledig aansprakelijk is voor de schulden; of

b. daarin anderszins vennoot is teneinde met die vennootschap duurzaam verbonden te zijn ten dienste van de eigen werkzaamheid.

Artikel 24d

Bij de vaststelling in hoeverre de leden of aandeelhouders stemmen, aanwezig of vertegenwoordigd zijn, of in hoeverre het aandelenkapitaal verschaft wordt of vertegenwoordigd is, wordt geen rekening gehouden met lidmaatschappen of aandelen waarvan de wet bepaalt dat daarvoor geen stem kan worden uitgebracht.

Artikel 25

Van de bepalingen van dit boek kan slechts worden afgeweken, voor zover dat uit de wet blijkt.

Titel 2. Verenigingen

Artikel 26

1. De vereniging is een rechtspersoon met leden die is gericht op een bepaald doel, anders dan een dat is omschreven in artikel 53 lid 1 of lid 2.

2. Een vereniging wordt bij meerzijdige rechtshandeling opgericht.

3. Een vereniging mag geen winst onder haar leden verdelen.

Artikel 27

1. Wordt een vereniging opgericht bij een notariële akte, dan moeten de volgende bepalingen in acht worden genomen.

2. De akte wordt verleden in de Nederlandse taal. Een volmacht tot medewerking aan de akte moet schriftelijk zijn verleend. Indien de vereniging haar zetel heeft in de provincie Fryslân kan de akte in de Friese taal worden verleden.

3. De akte bevat de statuten van de vereniging.

4. De statuten houden in:

a. de naam van de vereniging en de gemeente in Nederland waar zij haar zetel heeft;

b. het doel van de vereniging;

c. de verplichtingen die de leden tegenover de vereniging hebben, of de wijze waarop zodanige verplichtingen kunnen worden opgelegd;

d. de wijze van bijeenroeping van de algemene vergadering;

e. de wijze van benoeming en ontslag van de bestuurders;

f. de bestemming van het batig saldo van de vereniging in geval van ontbinding, of de wijze waarop de bestemming zal worden vastgesteld.

5. De notaris, ten overstaan van wie de akte wordt verleden, draagt zorg dat de akte voldoet aan het in de leden 2-4 bepaalde. Bij verzuim is hij persoonlijk jegens hen die daardoor schade hebben geleden, aansprakelijk.

Artikel 28

1. Is een vereniging niet overeenkomstig het eerste lid van het vorige artikel opgericht, dan kan de algemene vergadering besluiten de statuten te doen opnemen in een notariële akte.

2. De leden 2-5 van het vorige artikel zijn van overeenkomstige toepassing.

Artikel 29

1. De bestuurders van een vereniging waarvan de statuten zijn opgenomen in een notariële akte, zijn verplicht haar te doen inschrijven in het handelsregister en een authentiek afschrift van de akte, dan wel een authentiek uittreksel van de akte bevattende de statuten, ten kantore van dat register neer te leggen.

2. Zolang de opgave ter eerste inschrijving en nederlegging niet zijn geschied, is iedere bestuurder voor een rechtshandeling waardoor hij de vereniging verbindt, naast de vereniging hoofdelijk aansprakelijk.

Artikel 30

1. Een vereniging waarvan de statuten niet zijn opgenomen in een notariële akte, kan geen registergoederen verkrijgen en kan geen erfgenaam zijn.

2. De bestuurders zijn hoofdelijk naast de vereniging verbonden voor schulden uit een rechtshandeling die tijdens hun bestuur opeisbaar worden. Na hun aftreden zijn zij voorts hoofdelijk verbonden voor schulden, voortspruitend uit een tijdens hun bestuur verrichte rechtshandeling, voor zover daarvoor niemand ingevolge de vorige zin naast de vereniging is verbonden. Aansprakelijkheid ingevolge een der voorgaande zinnen rust niet op degene die niet tevoren over de rechtshandeling is geraadpleegd en die heeft geweigerd haar, toen zij hem bekend werd, als bestuurder voor zijn verantwoording te nemen. Ontbreken personen die ingevolge de eerste of tweede zin naast de vereniging zijn verbonden, dan zijn degenen die handelden, hoofdelijk verbonden.

3. De bestuurders van een zodanige vereniging kunnen haar doen inschrijven in het handelsregister. Indien de statuten op schrift zijn gesteld, leggen zij alsdan een afschrift daarvan ten kantore van dat register neer.

4. Heeft de inschrijving, bedoeld in het vorige lid, plaatsgevonden, dan is degene die uit hoofde van lid 2 wordt verbonden slechts aansprakelijk, voor zover de wederpartij aannemelijk maakt dat de vereniging niet aan de verbintenis zal voldoen.

Artikel 31 [Vervallen per 01-01-1992]

Artikel 32 [Vervallen per 01-09-1994]

Artikel 33

Tenzij de statuten anders bepalen, beslist het bestuur over de toelating van een lid en kan bij niet-toelating de algemene vergadering alsnog tot toelating besluiten.

Artikel 34

1. Het lidmaatschap van de vereniging is persoonlijk, tenzij de statuten anders bepalen.

2. Tenzij de statuten van de vereniging anders bepalen, gaat het lidmaatschap van een rechtspersoon die door fusie of splitsing ophoudt te bestaan, over op de verkrijgende rechtspersoon onderscheidenlijk overeenkomstig de aan de akte van splitsing gehechte beschrijving op een van de verkrijgende rechtspersonen.

Artikel 34a

Verbintenissen kunnen slechts bij of krachtens de statuten aan het lidmaatschap worden verbonden.

Artikel 35

1. Het lidmaatschap eindigt:

a. door de dood van het lid, tenzij de statuten overgang krachtens erfrecht toelaten;

b. door opzegging door het lid;

c. door opzegging door de vereniging;

d. door ontzetting.

2. De vereniging kan het lidmaatschap opzeggen in de gevallen in de statuten genoemd, voorts wanneer een lid heeft opgehouden aan de vereisten door de statuten voor het lidmaatschap gesteld, te voldoen, alsook wanneer redelijkerwijs van de vereniging niet gevergd kan worden het

lidmaatschap te laten voortduren. Tenzij de statuten dit aan een ander orgaan opdragen, geschiedt de opzegging door het bestuur.

3. Ontzetting kan alleen worden uitgesproken wanneer een lid in strijd met de statuten, reglementen of besluiten der vereniging handelt, of de vereniging op onredelijke wijze benadeelt.

4. Tenzij de statuten dit aan een ander orgaan opdragen, geschiedt de ontzetting door het bestuur. Het lid wordt ten spoedigste schriftelijk van het besluit, met opgave van redenen, in kennis gesteld. Hem staat, behalve wanneer krachtens de statuten het besluit door de algemene vergadering is genomen, binnen één maand na ontvangst van de kennisgeving van het besluit, beroep op de algemene vergadering of een daartoe bij de statuten aangewezen orgaan of derde open. De statuten kunnen een andere regeling van het beroep bevatten, doch de termijn kan niet korter dan op één maand worden gesteld. Gedurende de beroepstermijn en hangende het beroep is het lid geschorst.

5. Wanneer het lidmaatschap in de loop van een boekjaar eindigt, blijft, tenzij de statuten anders bepalen, desniettemin de jaarlijkse bijdrage voor het geheel verschuldigd.

Artikel 36

1. Tenzij de statuten anders bepalen, kan opzegging van het lidmaatschap slechts geschieden tegen het einde van een boekjaar en met inachtneming van een opzeggingstermijn van vier weken; op deze termijn is de Algemene termijnenwet niet van toepassing. In ieder geval kan het lidmaatschap worden beëindigd door opzegging tegen het eind van het boekjaar, volgend op dat waarin wordt opgezegd, of onmiddellijk, indien redelijkerwijs niet gevergd kan worden het lidmaatschap te laten voortduren.

2. Een opzegging in strijd met het in het vorige lid bepaalde, doet het lidmaatschap eindigen op het vroegst toegelaten tijdstip volgende op de datum waartegen was opgezegd.

3. Een lid kan voorts zijn lidmaatschap met onmiddellijke ingang opzeggen binnen een maand nadat een besluit waarbij zijn rechten zijn beperkt of zijn verplichtingen zijn verzwaard, hem is bekend geworden of medegedeeld; het besluit is alsdan niet op hem van toepassing. Deze bevoegdheid tot opzegging kan de leden bij de statuten worden ontzegd voor het geval van wijziging van de daar nauwkeurig omschreven rechten en verplichtingen en voorts in het algemeen voor het geval van wijziging van geldelijke rechten en verplichtingen.

4. Een lid kan zijn lidmaatschap ook met onmiddellijke ingang opzeggen binnen een maand nadat hem een besluit is meegedeeld tot omzetting van de vereniging is een andere rechtsvorm, tot fusie of tot splitsing.

Artikel 37

1. Het bestuur wordt uit de leden benoemd, De statuten kunnen echter bepalen dat bestuurders ook buiten de leden kunnen worden benoemd.

2. De benoeming geschiedt door de algemene vergadering. De statuten kunnen de wijze van benoeming echter ook anders regelen, mits elk lid middellijk of onmiddellijk aan de stemming over de benoeming der bestuurders kan deelnemen.

3. De statuten kunnen bepalen, dat een of meer der bestuursleden, mits minder dan de helft, door andere personen dan de leden worden benoemd.

4. Is in de statuten bepaald dat een bestuurder in een vergadering uit een bindende voordracht moet worden benoemd, dan kan aan die voordracht het bindend karakter worden ontnomen door een met ten minste twee derden van de uitgebrachte stemmen genomen besluit van die vergadering. In de statuten kan worden bepaald dat op deze vergadering ten minste een bepaald aantal stemmen moet kunnen worden uitgebracht; dit aantal mag niet hoger worden gesteld dan twee derden van het aantal stemmen dat door de stemgerechtigden gezamenlijk kan worden uitgebracht.

5. Indien ingevolge de statuten een bestuurslid door leden of afdelingen buiten een vergadering wordt benoemd, dan moet aan de leden gelegenheid worden geboden kandidaten te stellen. De statuten kunnen bepalen dat dit recht slechts aan een aantal leden gezamenlijk toekomt, mits hun aantal niet hoger wordt gesteld dan een vijfde van het aantal leden dat aan de verkiezing kan deelnemen. De statuten kunnen voorts bepalen dat aldus gestelde kandidaten slechts zijn benoemd, indien zij ten minste een bepaald aantal stemmen op zich hebben verenigd, mits dit aantal niet groter is dan twee derden van het aantal der uitgebrachte stemmen.

6. Een bestuurslid kan, ook al is hij voor een bepaalde tijd benoemd, te allen tijde door het orgaan dat hem heeft benoemd, worden ontslagen of geschorst. Een veroordeling tot herstel van de arbeidsovereenkomst tussen de vereniging en bestuurder kan door de rechter niet worden uitgesproken.

7. Tenzij de statuten anders bepalen, wijst het bestuur uit zijn midden een voorzitter, een secretaris en een penningmeester aan.

Artikel 38

1. Behoudens het in het volgende artikel bepaalde, hebben alle leden die niet geschorst zijn, toegang tot de algemene vergadering en hebben daar ieder één stem; een geschorst lid heeft toegang tot de vergadering waarin het besluit tot schorsing wordt behandeld, en is bevoegd daarover het woord te voeren. De statuten kunnen aan bepaalde leden meer dan één stem toekennen.

2. Tenzij de statuten anders bepalen, treden de voorzitter en de secretaris van het bestuur of hun vervangers, als zodanig ook op bij de algemene vergadering.

3. De statuten kunnen bepalen dat personen die deel uitmaken van andere organen der vereniging en die geen lid zijn, in de algemene vergadering stemrecht kunnen uitoefenen. Het aantal der door hen gezamenlijk uitgebrachte stemmen zal echter niet meer mogen zijn dan de helft van het aantal der door de leden uitgebrachte stemmen.

4. Tenzij de statuten anders bepalen, kan iemand die krachtens lid 1 of lid 3 stemgerechtigd is, aan een andere stemgerechtigde schriftelijk volmacht verlenen tot het uitbrengen van zijn stem.

Artikel 39

1. De statuten kunnen bepalen dat de algemene vergadering zal bestaan uit afgevaardigden die door en uit de leden worden gekozen. De wijze van verkiezing en het aantal van de afgevaardigden worden door de statuten geregeld; elk lid moet middellijk of onmiddellijk aan de verkiezing kunnen deelnemen. De leden 4 en 5 van artikel 37 zijn bij de verkiezing van overeenkomstige toepassing. Artikel 38 lid 3 is van overeenkomstige toepassing op personen die deel uitmaken van andere organen der vereniging en die geen afgevaardigde zijn.

2. De statuten kunnen bepalen dat bepaalde besluiten van de algemene vergadering aan een referendum zullen worden onderworpen. De statuten regelen de gevallen waarin, de tijd waarbinnen, en de wijze waarop het referendum zal worden gehouden. Hangende de uitslag van het referendum wordt de uitvoering van het besluit geschorst.

Artikel 40

1. Aan de algemene vergadering komen in de vereniging alle bevoegdheden toe, die niet door de wet of de statuten aan andere organen zijn opgedragen.

2. Een eenstemmig besluit van alle leden of afgevaardigden, ook al zijn deze niet in een vergadering bijeen, heeft, mits met voorkennis van het bestuur genomen, dezelfde kracht als een besluit van de algemene vergadering.

Artikel 41

1. Het bestuur roept de algemene vergadering bijeen, zo dikwijls het dit wenselijk oordeelt, of wanneer het daartoe volgens de wet of de statuten verplicht is. De statuten kunnen deze bevoegdheid ook aan anderen dan het bestuur verlenen.

2. Op schriftelijk verzoek van ten minste een zodanig aantal leden of afgevaardigden als bevoegd is tot het uitbrengen van een tiende gedeelte der stemmen in de algemene vergadering of van een zoveel geringer aantal als bij de statuten is bepaald, is het bestuur verplicht tot het bijeenroepen van een algemene vergadering op een termijn van niet langer dan vier weken na indiening van het verzoek.

3. Indien aan het verzoek binnen veertien dagen geen gevolg wordt gegeven, kunnen, tenzij in de statuten de wijze van bijeenroeping der algemene vergadering voor dit geval anders is geregeld, de verzoekers zelf tot die bijeenroeping overgaan op de wijze waarop het bestuur de algemene vergadering bijeenroept of bij advertentie in ten minste één ter plaatse waar de vereniging gevestigd is, veelgelezen dagblad. De verzoekers kunnen alsdan anderen dan bestuursleden belasten met de leiding der vergadering en het opstellen der notulen.

Artikel 41a

De artikelen 37-41 zijn van overeenkomstige toepassing op de afdelingen van een vereniging die geen rechtspersonen zijn en die een algemene vergadering en een bestuur hebben; hetgeen in die artikelen omtrent de statuten is bepaald, kan in een afdelingsreglement worden neergelegd.

Artikel 42

1. In de statuten van de vereniging kan geen verandering worden gebracht dan door een besluit van een algemene vergadering, waartoe is opgeroepen met de mededeling dat aldaar wijziging van de statuten zal worden voorgesteld. De termijn voor oproeping tot een zodanige vergadering bedraagt ten minste zeven dagen.

2. Zij die de oproeping tot de algemene vergadering ter behandeling van een voorstel tot statutenwijziging hebben gedaan, moeten ten minste vijf dagen vóór de vergadering een afschrift van dat voorstel, waarin de voorgedragen wijziging woordelijk is opgenomen, op een daartoe geschikte plaats voor de leden ter inzage leggen tot na afloop van de dag waarop de vergadering wordt gehouden. Aan de afdelingen waaruit de vereniging bestaat en aan afgevaardigden moet het voorstel ten minste veertien dagen vóór de vergadering ter kennis zijn gebracht; de vorige zin is alsdan niet van toepassing.

3. Het bepaalde in de eerste twee leden is niet van toepassing, indien in de algemene vergadering alle leden of afgevaardigden aanwezig of vertegenwoordigd zijn en het besluit tot statutenwijziging met algemene stemmen wordt genomen.

4. Het in dit artikel en de eerste twee leden van het volgende artikel bepaalde is van overeenkomstige toepassing op een besluit tot ontbinding.

Artikel 43

1. Tenzij de statuten anders bepalen, behoeft een besluit tot statutenwijziging ten minste twee derden van de uitgebrachte stemmen.

2. Voor zover de bevoegdheid tot wijziging bij de statuten mocht zijn uitgesloten, is wijziging niettemin mogelijk met algemene stemmen in een vergadering, waarin alle leden of afgevaardigden aanwezig of vertegenwoordigd zijn.

3. Een bepaling in de statuten, welke de bevoegdheid tot wijziging van een of meer andere bepalingen beperkt, kan slechts worden gewijzigd met inachtneming van gelijke beperking.

4. Een bepaling in de statuten, welke de bevoegdheid tot wijziging van een of meer andere bepalingen uitsluit, kan slechts worden gewijzigd met algemene stemmen in een vergadering, waarin alle leden of afgevaardigden aanwezig of vertegenwoordigd zijn.

5. Heeft de vereniging volledige rechtsbevoegdheid, dan treedt de wijziging niet in werking dan nadat hiervan een notariële akte is opgemaakt. De bestuurders zijn verplicht een authentiek afschrift van de wijziging en de gewijzigde statuten neder te leggen ten kantore van het handelsregister.

6. De bestuurders van een vereniging met beperkte rechtsbevoegdheid, waarvan de statuten overeenkomstig artikel 30 lid 3 van dit Boek in afschrift ten kantore van het handelsregister zijn nedergelegd, zijn verplicht aldaar tevens een afschrift van de wijziging en van de gewijzigde statuten neder te leggen.

Artikel 44

1. Behoudens beperkingen volgens de statuten is het bestuur belast met het besturen van de vereniging.

2. Slechts indien dit uit de statuten voortvloeit, is het bestuur bevoegd te besluiten tot het aangaan van overeenkomsten tot verkrijging, vervreemding en bezwaring van registergoederen, en tot het aangaan van overeenkomsten waarbij de vereniging zich als borg of hoofdelijk medeschuldenaar verbindt, zich voor een derde sterk maakt of zich tot zekerheidstelling voor een schuld van een ander verbindt. De statuten kunnen deze bevoegdheid aan beperkingen en voorwaarden binden. De uitsluiting, beperkingen en voorwaarden gelden mede voor de bevoegdheid tot vertegenwoordiging van de vereniging ter zake van deze handelingen, tenzij de statuten anders bepalen.

Artikel 45

1. Het bestuur vertegenwoordigt de vereniging, voor zover uit de wet niet anders voortvloeit.

2. De statuten kunnen de bevoegdheid tot vertegenwoordiging bovendien toekennen aan een of meer bestuurders. Zij kunnen bepalen dat een bestuurder de vereniging slechts met medewerking van een of meer anderen mag vertegenwoordigen.

3. Bevoegdheid tot vertegenwoordiging die aan het bestuur of aan een bestuurder toekomt, is onbeperkt en onvoorwaardelijk, voor zover uit de wet niet anders voortvloeit. Een wettelijk toegelaten of voorgeschreven beperking van of voorwaarde voor de bevoegdheid tot vertegenwoordiging kan slechts door de vereniging worden ingeroepen.

4. De statuten kunnen ook aan andere personen dan bestuurders bevoegdheid tot vertegenwoordiging toekennen.

Artikel 46

De vereniging kan, voor zover uit de statuten niet het tegendeel voortvloeit, ten behoeve van de leden rechten bedingen en, voor zover dit in de statuten uitdrukkelijk is bepaald, te hunnen laste verplichtingen aangaan. Zij kan nakoming van bedongen rechten jegens en schadevergoeding aan een lid vorderen, tenzij dit zich daartegen verzet.

Artikel 47

In alle gevallen waarin de vereniging een tegenstrijdig belang heeft met een of meer bestuurders of commissarissen kan de algemene vergadering een of meer personen aanwijzen om de vereniging te vertegenwoordigen.

Artikel 48

1. Het bestuur brengt op een algemene vergadering binnen zes maanden na afloop van het boekjaar, behoudens verlenging van deze termijn door de algemene vergadering, een jaarverslag uit over de gang van zaken in de vereniging en over het gevoerde beleid. Het legt de balans en de staat van baten en lasten met een toelichting ter goedkeuring aan de vergadering over. Deze stukken worden ondertekend door de bestuurders en commissarissen; ontbreekt de ondertekening van een of meer hunner, dan wordt daarvan onder opgave van redenen melding gemaakt. Na verloop van de termijn kan ieder lid van de gezamenlijke bestuurders in rechte vorderen dat zij deze verplichtingen nakomen.

2. Ontbreekt een raad van commissarissen en wordt omtrent de getrouwheid van de stukken aan de algemene vergadering niet overgelegd een verklaring afkomstig van een accountant als bedoeld in artikel 393 lid 1, dan benoemt de algemene vergadering jaarlijks een commissie van ten minste twee leden die geen deel van het bestuur mogen uitmaken. De commissie onderzoekt de stukken bedoeld in de tweede zin van lid 1, en brengt aan de algemene vergadering verslag van haar bevindingen uit. Het bestuur is verplicht de commissie ten behoeve van haar onderzoek alle door haar gevraagde inlichtingen te verschaffen, haar desgewenst de kas en de waarden te tonen en de boeken, bescheiden en andere gegevensdragers van de vereniging voor raadpleging beschikbaar te stellen.

3. Een vereniging die een of meer ondernemingen in stand houdt welke ingevolge de wet in het handelsregister moeten worden ingeschreven, vermeldt bij de staat van baten en lasten de netto-omzet van deze ondernemingen.

Artikel 49

1. Jaarlijks binnen zes maanden na afloop van het boekjaar van een vereniging als bedoeld in artikel 360 lid 3, behoudens verlenging van deze termijn met ten hoogste vijf maanden door de algemene vergadering op grond van bijzondere omstandigheden, maakt het bestuur een jaarrekening op en legt het deze voor de leden ter inzage ten kantore van de vereniging. Binnen deze termijn legt het bestuur ook het jaarverslag ter inzage voor de leden, tenzij de artikelen 396 lid 6, eerste volzin, of 403 voor de vereniging gelden. De termijn kan voor beleggingsmaatschappijen waaraan ingevolge de Wet toezicht beleggingsinstellingen een vergunning is verleend, bij of krachtens die wet worden bekort.

2. De jaarrekening wordt ondertekend door de bestuurders en door de commissarissen; ontbreekt de ondertekening van een of meer hunner, dan wordt daarvan onder opgave van reden melding gemaakt.

3. De jaarrekening wordt vastgesteld door de algemene vergadering die het bestuur uiterlijk een maand na afloop van de termijn doet houden. Vaststelling van de jaarrekening strekt niet tot kwijting aan een bestuurder onderscheidenlijk commissaris.

4. Artikel 48 lid 1 is niet van toepassing op de vereniging bedoeld in artikel 360 lid 3. Artikel 48 lid 2 is hierop van toepassing met dien verstande dat onder stukken wordt verstaan de stukken die ingevolge lid 1 worden overgelegd.

5. Een vereniging als bedoeld in artikel 360 lid 3 mag ten laste van de door de wet voorgeschreven reserves een tekort slechts delgen voor zover de wet dat toestaat.

6. Onze Minister van Economische Zaken kan desverzocht om gewichtige redenen ontheffing verlenen van de verplichting tot het opmaken, het overleggen en het vaststellen van de jaarrekening.

Artikel 50

De vereniging, bedoeld in artikel 360 lid 3, zorgt dat de opgemaakte jaarrekening, het jaarverslag en de krachtens artikel 392 lid 1 toe te voegen gegevens vanaf de oproep voor de algemene vergadering, bestemd tot behandeling van de jaarrekening, te haren kantore aanwezig zijn. De leden kunnen de stukken aldaar inzien en er kosteloos een afschrift van verkrijgen.

Artikel 50a

De artikelen 131, 138, 139, 149 en 150 zijn van overeenkomstige toepassing in geval van faillissement van een vereniging waarvan de statuten zijn opgenomen in een notariële akte en die aan de heffing van vennootschapsbelasting is onderworpen.

Artikel 51

In geval van faillissement of surséance van betaling van een vereniging die is ingeschreven in het handelsregister, worden de aankondigingen welke krachtens de Faillissementswet in de Nederlandse Staatscourant worden opgenomen, door hem die met die openbaarmaking is belast, mede ter inschrijving in dat register opgegeven.

Artikel 52

Voorzover van de bepalingen van deze titel in de statuten kan worden afgeweken, kan deze afwijking alleen geschieden bij op schrift gestelde statuten.

14.2. Law on Foundations

Foundations are governed by the Civil Code "Burgerlijk Wetboek"[388].

For Articles 1 – 25 see Law on Associations 14.1 on page 364.

Titel 6. Stichtingen

Artikel 285

1. Een stichting is een door een rechtshandeling in het leven geroepen rechtspersoon, welke geen leden kent en beoogt met behulp van een daartoe bestemd vermogen een in de statuten vermeld doel te verwezenlijken.

2. Indien de statuten een of meer personen de bevoegdheid geven in de vervulling van ledige plaatsen in organen van de stichting te voorzien, wordt zij niet uit dien hoofde aangemerkt leden te kennen.

3. Het doel van de stichting mag niet inhouden het doen van uitkeringen aan oprichters of aan hen die deel uitmaken van haar organen noch ook aan anderen, tenzij wat deze laatsten betreft de uitkeringen een ideële of sociale strekking hebben.

Artikel 286

1. Een stichting moet worden opgericht bij notariële akte.

2. De akte moet worden verleden in de Nederlandse taal. Indien de stichting haar zetel heeft in de provincie Fryslân kan de akte in de Friese taal worden verleden. Een volmacht tot medewerking aan de akte moet schriftelijk zijn verleend. De stichting kan worden opgericht bij openbaar testament dat in een andere dan de Nederlandse of de Friese taal is verleden; de statuten van de stichting moeten ook dan in de Nederlandse of Friese taal luiden.

3. De akte bevat de statuten van de stichting.

4. De statuten moeten inhouden:

a. de naam der stichting, met het woord stichting als deel van de naam;

b. het doel der stichting;

c. de wijze van benoeming en ontslag der bestuurders;

d. de gemeente in Nederland waar zij haar zetel heeft;

e. de bestemming van het overschot na vereffening van de stichting in geval van ontbinding, of de wijze waarop de bestemming zal worden vastgesteld.

5. De notaris, ten overstaan van wie de akte is verleden, draagt zorg dat de statuten bevatten hetgeen in de leden 2-4 is genoemd. Bij verzuim is hij persoonlijk jegens hen die daardoor schade hebben geleden, aansprakelijk.

[388] http://wetten.overheid.nl/cgi-bin/sessioned/browsercheck/continuation=12412-002/session=561206364260175/action=javascript-result/javascript=yes, 4 March 2005.

Artikel 287

Bij gebreke van een aanwijzing van een zetel in de statuten, heeft de stichting haar zetel in de gemeente, waar de notaris voor wie de akte is verleden, ten tijde van het passeren der akte zijn standplaats had.

Artikel 288 [Vervallen per 01-01-2003]

Artikel 289

1. De bestuurders zijn verplicht de stichting benevens de naam, de voornamen en de woonplaats of laatste woonplaats van de oprichter of oprichters te doen inschrijven in het handelsregister en een authentiek afschrift dan wel een authentiek uittreksel van de akte van oprichting bevattende de statuten, ten kantore van dat register neer te leggen.

2. Zolang de opgave ter eerste inschrijving en nederlegging niet zijn geschied, is iedere bestuurder voor een rechtshandeling, waardoor hij de stichting verbindt, naast de stichting hoofdelijk aansprakelijk.

Artikel 290 [Vervallen per 01-01-1992]

Artikel 291

1. Behoudens beperkingen volgens de statuten is het bestuur belast met het besturen van de stichting.

2. Slechts indien dit uit de statuten voortvloeit, is het bestuur bevoegd te besluiten tot het aangaan van overeenkomsten tot verkrijging, vervreemding en bezwaring van registergoederen, en tot het aangaan van overeenkomsten waarbij de stichting zich als borg of hoofdelijk medeschuldenaar verbindt, zich voor een derde sterk maakt of zich tot zekerheidstelling voor een schuld van een ander verbindt. De statuten kunnen deze bevoegdheid aan beperkingen en voorwaarden binden. De uitsluiting, beperkingen en voorwaarden gelden mede voor de bevoegdheid tot vertegenwoordiging van de stichting ter zake van deze handelingen, tenzij de statuten anders bepalen.

Artikel 292

1. Het bestuur vertegenwoordigt de stichting, voor zover uit de wet niet anders voortvloeit.

2. De statuten kunnen de bevoegdheid tot vertegenwoordiging bovendien toekennen aan een of meer bestuurders. Zij kunnen bepalen dat een bestuurder de stichting slechts met medewerking van een of meer anderen mag vertegenwoordigen.

3. Bevoegdheid tot vertegenwoordiging die aan het bestuur of aan een bestuurder toekomt, is onbeperkt en onvoorwaardelijk, voor zover uit de wet niet anders voortvloeit. Een wettelijk toegelaten of voorgeschreven beperking van of voorwaarde voor de bevoegdheid tot vertegenwoordiging kan slechts door de stichting worden ingeroepen.

4. De statuten kunnen ook aan andere personen dan bestuurders bevoegdheid tot vertegenwoordiging toekennen.

Artikel 293

De statuten van de stichting kunnen door haar organen slechts worden gewijzigd, indien de statuten daartoe de mogelijkheid openen. De wijziging moet op straffe van nietigheid bij notariële akte tot stand komen. De bestuurders zijn verplicht een authentiek afschrift van de wijziging en de gewijzigde statuten neer te leggen ten kantore van het in artikel 289 van dit Boek bedoelde register.

Artikel 294

1. Indien ongewijzigde handhaving van de statuten zou leiden tot gevolgen, die bij de oprichting redelijkerwijze niet kunnen zijn gewild, en de statuten de mogelijkheid van wijziging niet voorzien of zij die tot wijziging de bevoegdheid hebben, zulks nalaten, kan de rechtbank op verzoek van een oprichter, het bestuur of het openbaar ministerie de statuten wijzigen.

2. De rechtbank wijkt daarbij zo min mogelijk van de bestaande statuten af; indien wijziging van het doel noodzakelijk is, wijst zij een doel aan dat aan het bestaande verwant is. Met inachtneming van het vorenstaande is de rechtbank bevoegd, zo nodig, de statuten op andere wijze te wijzigen dan is verzocht.

3. Met overeenkomstige toepassing van de beide vorige leden kan de rechtbank de statuten wijzigen om ontbinding van de stichting op een grond als vermeld in artikel 21 of artikel 301 lid 1 onder a te voorkomen.

Artikel 295

Een besluit tot wijziging van de statuten kan te allen tijde op verzoek van de stichting, van een belanghebbende of van het openbaar ministerie door de rechtbank worden vernietigd, indien de wijziging tot gevolg heeft dat de stichting kan worden ontbonden op een grond als bedoeld in de artikelen 21 of 301 lid 1, en die wijziging niet tot omzetting leidt. Overigens zijn artikel 15 leden 3 en 4 en artikel 16 van toepassing.

Artikel 296

In een geding, waarin ontbinding van een stichting op een grond als vermeld in artikel 21 of 301 lid 1 onder a wordt verzocht, kan de rechtbank de bevoegdheden in de beide voorgaande artikelen genoemd, ambtshalve uitoefenen.

Artikel 297

1. Het openbaar ministerie bij de rechtbank is, bij ernstige twijfel of de wet of de statuten te goeder trouw worden nageleefd, dan wel het bestuur naar behoren wordt gevoerd, bevoegd aan het bestuur inlichtingen te verzoeken.

2. Bij niet- of niet-behoorlijke voldoening aan het verzoek kan de voorzieningenrechter van de rechtbank, desverzocht, bevelen dat aan het openbaar ministerie de boeken, bescheiden en andere gegevensdragers van de stichting voor raadpleging beschikbaar worden gesteld en de waarden der stichting worden getoond. Tegen de beschikking van de voorzieningenrechter staat geen hoger beroep of cassatie open.

Artikel 298

1. Een bestuurder die:

a. iets doet of nalaat in strijd met de bepalingen van de wet of van de statuten, dan wel zich schuldig maakt aan wanbeheer, of

b. niet of niet behoorlijk voldoet aan een door de voorzieningenrechter van de rechtbank, ingevolge het vorige artikel, gegeven bevel, kan door de rechtbank worden ontslagen. Dit kan geschieden op verzoek van het openbaar ministerie of iedere belanghebbende.

2. De rechtbank kan, hangende het onderzoek, voorlopige voorzieningen in het bestuur treffen en de bestuurder schorsen.

3. Een door de rechtbank ontslagen bestuurder kan gedurende vijf jaar na het ontslag geen bestuurder van een stichting worden.

Artikel 299

Telkens wanneer het door de statuten voorgeschreven bestuur geheel of gedeeltelijk ontbreekt en daarin niet overeenkomstig de statuten wordt voorzien, kan de rechtbank, op verzoek van iedere belanghebbende of het openbaar ministerie in de vervulling van de ledige plaats voorzien. De rechtbank neemt daarbij zoveel mogelijk de statuten in acht.

Artikel 299a

Een stichting die een of meer ondernemingen in stand houdt welke ingevolge de wet in het handelsregister moeten worden ingeschreven, vermeldt bij de staat van baten en lasten de netto-omzet van deze ondernemingen.

Artikel 300

1. Jaarlijks binnen zes maanden na afloop van het boekjaar van een stichting als bedoeld in artikel 360 lid 3, behoudens verlenging van deze termijn met ten hoogste vijf maanden door het in lid 3 bedoelde orgaan op grond van bijzondere omstandigheden, maakt het bestuur een jaarrekening op en legt het deze voor hen die deel uitmaken van het in lid 3 bedoelde orgaan ter inzage ten kantore van de stichting. Binnen deze termijn legt het bestuur ook de krachtens artikel 392 lid 1 toe te voegen gegevens ter inzage voor hen die deel uitmaken van het in lid 3 bedoelde orgaan en het jaarverslag, tenzij artikel 396 lid 6, eerste volzin, voor zover het betreft het jaarverslag, of artikel 403 voor de stichting gelden. De termijn kan voor beleggingsmaatschappijen waaraan ingevolge de Wet toezicht beleggingsinstellingen een vergunning is verleend, bij of krachtens die wet worden bekort. Zij die deel uitmaken van het in lid 3 bedoelde orgaan kunnen kosteloos een afschrift van deze stukken verkrijgen.

2. De jaarrekening wordt ondertekend door de bestuurders en door hen die deel uitmaken van het toezicht houdende orgaan; ontbreekt de ondertekening van een of meer hunner, dan wordt

daarvan onder opgave van reden melding gemaakt.

3. De jaarrekening wordt uiterlijk een maand na afloop van de termijn vastgesteld door het daartoe volgens de statuten bevoegde orgaan. Indien de statuten deze bevoegdheid niet aan enig orgaan verlenen, komt deze bevoegdheid toe aan het toezicht houdende orgaan en bij gebreke daarvan aan het bestuur.

4. Een stichting als bedoeld in artikel 360 lid 3 mag ten laste van de door de wet voorgeschreven reserves een tekort slechts delgen voor zover de wet dat toestaat.

5. Onze Minister van Economische Zaken kan desverzocht om gewichtige redenen ontheffing verlenen van de verplichting tot het opmaken, het overleggen en het vaststellen van de jaarrekening.

Artikel 300a

De artikelen 131, 138, 139, 149 en 150 zijn van overeenkomstige toepassing in geval van faillissement van een stichting die aan de heffing van vennootschapsbelasting is onderworpen.

Artikel 301

1. De rechtbank ontbindt de stichting op verzoek van een belanghebbende of het openbaar ministerie, indien:

a. het vermogen van de stichting ten enenmale onvoldoende is voor de verwezenlijking van haar doel, en de mogelijkheid dat een voldoend vermogen door bijdragen of op andere wijze in afzienbare tijd zal worden verkregen, in hoge mate onwaarschijnlijk is;

b. het doel der stichting is bereikt of niet meer kan worden bereikt, en wijziging van het doel niet in aanmerking komt.

2. De rechtbank kan ook ambtshalve de stichting ontbinden tegelijk met de afwijzing van een verzoek als bedoeld in artikel 294.

Artikel 302

In kracht van gewijsde gegane rechterlijke uitspraken, inhoudende:

doorhaling, aanvulling of wijziging van het in het register ingeschrevene,

wijziging van de statuten van de stichting,

wijziging van of voorziening in het bestuur, of

vernietiging van een besluit tot wijziging van de statuten,

worden door de zorg van de griffier van het college waarvoor de zaak laatstelijk aanhangig was ingeschreven in het in artikel 289 van dit Boek genoemde register.

Artikel 303

In geval van faillissement of surséance van betaling van een stichting worden de aankondigingen welke krachtens de Faillissementswet in de Nederlandse Staatscourant worden opgenomen, door hem die met de openbaarmaking is belast, mede ter inschrijving in het register, bedoeld in artikel 289 van dit Boek, opgegeven.

Artikel 304

1. De deelnemers aan een pensioenfonds of aan een fonds als bedoeld in artikel 631, lid 3, onder c, van Boek 7, worden voor de toepassing van artikel 285 van dit Boek niet beschouwd als leden van een stichting die als een zodanig fonds werkzaam is.

2. Voor de toepassing van artikel 285 lid 3 van dit Boek gelden als uitkeringen aan oprichters van zulk een stichting of aan hen die deel uitmaken van haar organen, niet de uitkeringen die voortvloeien uit een recht op pensioen of uit een aanspraak krachtens een arbeidsovereenkomst waarin een beding als bedoeld in artikel 631, lid 3, onder c, van Boek 7, is opgenomen

Artikel 305 [Vervallen per 01-01-1984]

Artikel 306 [Vervallen per 01-01-1984]

Artikel 307 [Vervallen per 01-01-1984]

14.3. Law on NPO

There is no specific law on NPO in the Netherlands.

14.4. Law on NGO

There is no specific law on NGO in the Netherlands.

14.5. Law on other legal forms

No relevant laws governing other legal forms have been found for the Netherlands.

14.6. Other laws

14.6.1. Rules governing the National lottery

The rules governing the national lottery "Nationale Postcode Loterij (NPL)"[389].

Reglement

I. Algemeen

Artikel 1, Organisatie

1. De Nationale Postcode Loterij N.V., Van Eeghenstraat 70, 1071 GK Amsterdam, organiseert de Nationale Postcode Loterij.

2. De afdracht van de Nationale Postcode Loterij komt geheel ten goede aan doeleinden van algemeen belang, gelegen op het terrein van ontwikkelingssamenwerking en mensenrechten, natuur en milieu, humanitaire hulpverlening alsmede op het terrein van maatschappelijk, sociaal en cultureel werk en volksgezondheid.

3. Van overheidswege wordt toezicht uitgeoefend op de Nationale Postcode Loterij N.V. Bij de uitvoering voldoet de Nationale Postcode Loterij aan de van overheidswege gestelde eisen en aan de in de hierna te noemen vergunning gestelde voorschriften.

4. Aan de Nationale Postcode Loterij is op 19 december 1997 een vergunning verleend door de Minister van Justitie voor de uitvoering van de Nationale Postcode Loterij onder nummer L.O. 890/0098/831.5 (Stcrt 1997, 248), laatstelijk gewijzigd op 20 december 2002 (Stcrt 2002, 247)

15. Portugal

15.1. Law on Associations

Associations are governed by the Civil Code[390].

CAPÍTULO II

Pessoas colectivas

SECÇÃO I

Disposições gerais

ARTIGO 157º (Campo de aplicação)

As disposições do presente capítulo são aplicáveis às associações que não tenham por fim o lucro económico dos associados, às fundações de interesse social, e ainda às sociedades, quando a analogia das situações o justifique.

ARTIGO 158º (Aquisição da personalidade)

1. As associações constituídas por escritura pública, com as especificações referidas no nº 1 do artigo 167º, gozam de personalidade jurídica.

2. As fundações adquirem personalidade jurídica pelo reconhecimento, o qual é individual e da competência da autoridade administrativa.

ARTIGO 158º-A (Nulidade do acto de constituição ou instituição)

É aplicável à constituição de pessoas colectivas o disposto no artigo 280º, devendo o Ministério Público promover a declaração judicial da nulidade.

ARTIGO 159º (Sede)

A sede da pessoa colectiva é a que os respectivos estatutos fixarem ou, na falta de designação estatutária, o lugar em que funciona normalmente a administração principal.

ARTIGO 160º (Capacidade)

1. A capacidade das pessoas colectivas abrange todos os direitos e obrigações necessários ou convenientes à prossecução dos seus fins.

[389] http://www.postcodeloterij.nl/web/show/id=43392/sc=ace7c6, 10 March 2005.

[390] http://www.pgdlisboa.pt/pgdl/textos/tex_mostra_doc.php?nid=20&doc=files/tex_0020_051.html, 23 June 2005.

2. Exceptuam-se os direitos e obrigações vedados por lei ou que sejam inseparáveis da personalidade singular.

ARTIGO 162º (Órgãos)

Os estatutos da pessoa colectiva designarão os respectivos órgãos, entre os quais haverá um órgão colegial de administração e um conselho fiscal, ambos eles constituídos por um número ímpar de titulares, dos quais um será o presidente.

ARTIGO 163º (Representação)

1. A representação da pessoa colectiva, em juízo e fora dele, cabe a quem os estatutos determinarem ou, na falta de disposição estatutária, à administração ou a quem por ela for designado.

2. A designação de representantes por parte da administração só é oponível a terceiros quando se prove que estes a conheciam.

ARTIGO 164º (Obrigações e responsabilidade dos titulares dos órgãos da pessoa colectiva)

1. As obrigações e a responsabilidade dos titulares dos órgãos das pessoas colectivas para com estas são definidas nos respectivos estatutos, aplicando-se, na falta de disposições estatutárias, as regras do mandato com as necessárias adaptações.

2. Os membros dos corpos gerentes não podem abster-se de votar nas deliberações tomadas em reuniões a que estejam presentes, e são responsáveis pelos prejuízos delas decorrentes, salvo se houverem manifestado a sua discordância.

ARTIGO 165º (Responsabilidade civil das pessoas colectivas)

As pessoas colectivas respondem civilmente pelos actos ou omissões dos seus representantes, agentes ou mandatários nos mesmos termos em que os comitentes respondem pelos actos ou omissões dos seus comissários.

ARTIGO 166º (Destino dos bens no caso de extinção)

1. Extinta a pessoa colectiva, se existirem bens que lhe tenham sido doados ou deixados com qualquer encargo ou que estejam afectados a um certo fim, o tribunal, a requerimento do Ministério Público, dos liquidatários, de qualquer associado ou interessado, ou ainda de herdeiros do doador ou do autor da deixa testamentária, atribuí-los-á, com o mesmo encargo ou afectação, a outra pessoa colectiva.

2. Os bens não abrangidos pelo número anterior têm o destino que lhes for fixado pelos estatutos ou por deliberação dos associados, sem prejuízo do disposto em leis especiais; na falta de fixação ou de lei especial, o tribunal, a requerimento do Ministério Público, dos liquidatários, ou de qualquer associado ou interessado, determinará que sejam atribuídos a outra pessoa colectiva ou ao Estado, assegurando, tanto quanto possível, a realização dos fins da pessoa extinta.

SECÇÃO II

Associações

ARTIGO 167º (Acto de constituição e estatutos)

1. O acto de constituição da associação especificará os bens ou serviços com que os associados concorrem para o património social, a denominação, fim e sede da pessoa colectiva, a forma do seu funcionamento, assim como a sua duração, quando a associação se não constitua por tempo indeterminado.

2. Os estatutos podem especificar ainda os direitos e obrigações dos associados, as condições da sua admissão, saída e exclusão, bem como os termos da extinção da pessoa colectiva e consequente devolução do seu património.

ARTIGO 168º (Forma e publicidade)

1. O acto de constituição da associação, os estatutos e as suas alterações devem constar de escritura pública.

2. O notário deve, oficiosamente, a expensas da associação, comunicar a constituição e estatutos, bem como as alterações destes, à autoridade administrativa e ao Ministério Público e remeter ao jornal oficial um extracto para publicação.

3. O acto de constituição, os estatutos e as suas alterações não produzem efeitos em relação a

terceiros, enquanto não forem publicados nos termos do número anterior.

ARTIGO 170º (Titulares dos órgãos da associação e revogação dos seus poderes)

1. É a assembleia geral que elege os titulares dos órgãos da associação, sempre que os estatutos não estabeleçam outro processo de escolha.

2. As funções dos titulares eleitos ou designados são revogáveis, mas a revogação não prejudica os direitos fundados no acto de constituição.

3. O direito de revogação pode ser condicionado pelos estatutos à existência de justa causa.

ARTIGO 171º (Convocação e funcionamento do órgão da administração e do conselho fiscal)

1. O órgão da administração e o conselho fiscal são convocados pelos respectivos presidentes e só podem deliberar com a presença da maioria dos seus titulares.

2. Salvo disposição legal ou estatutária em contrário, as deliberações são tomadas por maioria de votos dos titulares presentes, tendo o presidente, além do seu voto, direito a voto de desempate.

ARTIGO 172º (Competência da assembleia geral)

1. Competem à assembleia geral todas as deliberações não compreendidas nas atribuições legais ou estatutárias de outros órgãos da pessoa colectiva.

2. São, necessariamente, da competência da assembleia geral a destituição dos titulares dos órgãos da associação, a aprovação do balanço, a alteração dos estatutos, a extinção da associação e a autorização para esta demandar os administradores por factos praticados no exercício do cargo.

ARTIGO 173º (Convocação da assembleia)

1. A assembleia geral deve ser convocada pela administração nas circunstâncias fixadas pelos estatutos e, em qualquer caso, uma vez em cada ano para aprovação do balanço.

2. A assembleia será ainda convocada sempre que a convocação seja requerida, com um fim legítimo, por um conjunto de associados não inferior à quinta parte da sua totalidade, se outro número não for estabelecido nos estatutos.

3. Se a administração não convocar a assembleia nos casos em que deve fazê-lo, a qualquer associado é lícito efectuar a convocação.

ARTIGO 174º (Forma de convocação)

1. A assembleia geral é convocada por meio de aviso postal, expedido para cada um dos associados com a antecedência mínima de oito dias; no aviso indicar-se-á o dia, hora e local da reunião e a respectiva ordem do dia.

2. São anuláveis as deliberações tomadas sobre matéria estranha à ordem do dia, salvo se todos os associados comparecerem à reunião e todos concordarem com o aditamento.

3. A comparência de todos os associados sanciona quaisquer irregularidades da convocação, desde que nenhum deles se oponha à realização da assembleia.

ARTIGO 175º (Funcionamento)

1. A assembleia não pode deliberar, em primeira convocação, sem a presença de metade, pelo menos, dos seus associados.

2. Salvo o disposto nos números seguintes, as deliberações são tomadas por maioria absoluta dos associados presentes.

3. As deliberações sobre alterações dos estatutos exigem o voto favorável de três quartos do número dos associados presentes.

4. As deliberações sobre a dissolução ou prorrogação da pessoa colectiva requerem o voto favorável de três quartos do número de todos os associados.

5. Os estatutos podem exigir um número de votos superior ao fixado nas regras anteriores.

ARTIGO 176º (Privação do direito de voto)

1. O associado não pode votar, por si ou como representante de outrem, nas matérias em que haja conflito de interesses entre a associação e ele, seu cônjuge, ascendentes ou descendentes.

2. As deliberações tomadas com infracção do disposto no número anterior são anuláveis se o voto do associado impedido for essencial à existência da maioria necessária.

ARTIGO 177º (Deliberações contrárias à lei ou aos estatutos)

As deliberações da assembleia geral contrárias à lei ou aos estatutos, seja pelo seu objecto, seja por virtude de irregularidades havidas na convocação dos associados ou no funcionamento da assembleia, são anuláveis.

ARTIGO 178º (Regime da anulabilidade)

1. A anulabilidade prevista nos artigos anteriores pode ser arguida, dentro do prazo de seis meses, pelo órgão da administração ou por qualquer associado que não tenha votado a deliberação.

2. Tratando-se de associado que não foi convocado regularmente para a reunião da assembleia, o prazo só começa a correr a partir da data em que ele teve conhecimento da deliberação.

ARTIGO 179º (Protecção dos direitos de terceiro)

A anulação das deliberações da assembleia não prejudica os direitos que terceiro de boa fé haja adquirido em execução das deliberações anuladas.

ARTIGO 180º (Natureza pessoal da qualidade de associado)

Salvo disposição estatutária em contrário, a qualidade de associado não é transmissível, quer por acto entre vivos, quer por sucessão; o associado não pode incumbir outrem de exercer os seus direitos pessoais.

ARTIGO 181º (Efeitos da saída ou exclusão)

O associado que por qualquer forma deixar de pertencer à associação não tem o direito de repetir as quotizações que haja pago e perde o direito ao património social, sem prejuízo da sua responsabilidade por todas as prestações relativas ao tempo em que foi membro da associação.

ARTIGO 182º (Causas de extinção)

1. As associações extinguem-se:

a) Por deliberação da assembleia geral;

b) Pelo decurso do prazo, se tiverem sido constituídas temporariamente;

c) Pela verificação de qualquer outra causa extintiva prevista no acto de constituição ou nos estatutos;

d) Pelo falecimento ou desaparecimento de todos os associados;

e) Por decisão judicial que declare a sua insolvência.

2. As associações extinguem-se ainda por decisão judicial:

a) Quando o seu fim se tenha esgotado ou se haja tornado impossível;

b) Quando o seu fim real não coincida com o fim expresso no acto de constituição ou nos estatutos;

c) Quando o seu fim seja sistematicamente prosseguido por meios ilícitos ou imorais;

d) Quando a sua existência se torne contrária à ordem pública.

ARTIGO 183º (Declaração da extinção)

1. Nos casos previstos nas alíneas b) e c) do nº 1 do artigo anterior, a extinção só se produzirá se, nos trinta dias subsequentes à data em que devia operar-se, a assembleia geral não decidir a prorrogação da associação ou a modificação dos estatutos.

2. Nos casos previstos no nº 2 do artigo precedente, a declaração da extinção pode ser pedida em juízo pelo Ministério Público ou por qualquer interessado.

3. A extinção por virtude da declaração de insolvência dá-se em consequência da própria declaração.

ARTIGO 184º (Efeitos da extinção)

1. Extinta a associação, os poderes dos seus órgãos ficam limitados à prática dos actos meramente conservatórios e dos necessários,

quer à liquidação do património social, quer à ultimação dos negócios pendentes; pelos actos restantes e pelos danos que deles advenham à associação respondem solidariamente os administradores que os praticarem.

2. Pelas obrigações que os administradores contraírem, a associação só responde perante terceiros se estes estavam de boa fé e à extinção não tiver sido dada a devida publicidade.

15.2. Law on Foundations

15.2.1. Civil Code

Foundations are governed by the Civil Code[391].

For Art. 157 – 166 Civil Code see Law on Associations 15.1 on page 383.

SECÇÃO III

Fundações

ARTIGO 185º (Instituição e sua revogação)

1. As fundações podem ser instituídas por acto entre vivos ou por testamento, valendo como aceitação dos bens a elas destinados, num caso ou noutro, o reconhecimento respectivo.

2. O reconhecimento pode ser requerido pelo instituidor, seus herdeiros ou executores testamentários, ou ser oficiosamente promovido pela autoridade competente.

3. A instituição por actos entre vivos deve constar de escritura pública e torna-se irrevogável logo que seja requerido o reconhecimento ou principie o respectivo processo oficioso.

4. Aos herdeiros do instituidor não é permitido revogar a instituição, sem prejuízo do disposto acerca da sucessão legitimária.

5. Ao acto de instituição da fundação, quando conste de escritura pública, bem como, em qualquer caso, aos estatutos e suas alterações, é aplicável o disposto na parte final do artigo 168º.

ARTIGO 186º (Acto de instituição e estatutos)

1. No acto de instituição deve o instituidor indicar o fim da fundação e especificar os bens que lhe são destinados.

2. No acto de instituição ou nos estatutos pode o instituidor providenciar ainda sobre a sede, organização e funcionamento da fundação, regular os termos da sua transformação ou extinção e fixar o destino dos respectivos bens.

ARTIGO 187º (Estatutos lavrados por pessoa diversa do instituidor)

1. Na falta de estatutos lavrados pelo instituidor ou na insuficiência deles, constando a instituição de testamento, é aos executadores deste que compete elaborá-los ou completá-los.

2. A elaboração total ou parcial dos estatutos incumbe à própria autoridade competente para o reconhecimento da fundação, quando o instituidor os não tenha feito e a instituição não conste de testamento, ou quando os executores testamentários os não lavrem dentro do ano posterior à abertura da sucessão.

3. Na elaboração dos estatutos ter-se-á em conta, na medida do possível, a vontade real ou presumível do fundador.

ARTIGO 188º (Reconhecimento)

1. Não será reconhecida a fundação cujo fim não for considerado de interesse social pela entidade competente.

2. Será igualmente negado o reconhecimento, quando os bens afectados à fundação se mostrem insuficientes para a prossecução do fim visado e não haja fundadas expectativas de suprimento da insuficiência.

3. Negado o reconhecimento por insuficiência do património, fica a instituição sem efeito, se o institutidor for vivo; mas, se já houver falecido, serão os bens entregues a uma associação ou fundação de fins análogos, que a entidade competente designar, salvo disposição do instituidor em contrário.

ARTIGO 189º (Modificação dos estatutos)

Os estatutos da fundação podem a todo o tempo ser modificados pela autoridade competente para o reconhecimento, sob proposta da respectiva administração, contanto que não haja alteração

[391] http://www.pgdlisboa.pt/pgdl/textos/tex_mostra_doc.php?nid=20&doc=files/tex_0020_051.html, 23 June 2005.

essencial do fim da instituição e se não contrarie a vontade do fundador.

ARTIGO 190º (Transformação)

1. Ouvida a administração, e também o fundador, se for vivo, a entidade competente para o reconhecimento pode atribuir à fundação um fim diferente:

a) Quando tiver sido inteiramente preenchido o fim para que foi instituída ou este se tiver tornado impossível;

b) Quando o fim da instituição deixar de revestir interesse social;

c) Quando o património se tornar insuficiente para a realização do fim previsto.

2. O novo fim deve aproximar-se, no que for possível, do fim fixado pelo fundador.

3. Não há lugar à mudança de fim, se o acto de instituição prescrever a extinção da fundação.

ARTIGO 191º (Encargo prejudicial aos fins da fundação)

1. Estando o património da fundação onerado com encargos cujo cumprimento impossibilite ou dificulte gravemente o preenchimento do fim institucional, pode a entidade competente para o reconhecimento sob proposta da administração, suprimir, reduzir ou comutar esses encargos, ouvido o fundador, se for vivo.

2. Se, porém, o encargo tiver sido motivo essencial da instituição, pode a mesma entidade considerar o seu cumprimento como fim da fundação, ou incorporar a fundação noutra pessoa colectiva capaz de satisfazer o encargo à custa do património incorporado, sem prejuízo dos seus próprios fins.

ARTIGO 192º (Causas de extinção)

1. As fundações extinguem-se:

a) Pelo decurso do prazo, se tiverem sido constituídas temporariamente;

b) Pela verificação de qualquer outra causa extintiva prevista no acto de instituição;

c) Por decisão judicial que declare a sua insolvência.

2. As fundações podem ainda ser extintas pela entidade competente para o reconhecimento:

a) Quando o seu fim se tenha esgotado ou se haja tornado impossível;

b) Quando o seu fim real não coincida com o fim expresso no acto de instituição;

c) Quando o seu fim seja sistematicamente prosseguido por meios ilícitos ou imorais;

d) Quando a sua existência se torne contrária à ordem pública.

ARTIGO 193º (Declaração da extinção)

Quando ocorra alguma das causas extintivas previstas no nº 1 do artigo anterior, a administração da fundação comunicará o facto à autoridade competente para o reconhecimento, a fim de esta declarar a extinção e tomar as providências que julgue convenientes para a liquidação do património.

ARTIGO 194º (Efeitos da extinção)

Extinta a fundação, na falta de providências especiais em contrário tomadas pela autoridade competente, é aplicável o disposto no artigo 184º.

15.2.2. Law on Foundations for Public Utility

Decree Law 460/77 on Foundations for public utility[392]

Artigo 1.º (Noção de pessoa colectiva de utilidade pública)

1 - São pessoas colectivas de utilidade pública as associações ou fundações que prossigam fins de interesse geral, ou da comunidade nacional ou de qualquer região ou circunscrição, cooperando com a Administração Central ou a administração local, em termos de merecerem da parte desta administração a declaração de «utilidade pública».

2 - As pessoas colectivas de utilidade pública administrativa são, para os efeitos do presente diploma, consideradas como pessoas colectivas de utilidade pública.

[392] http://64.233.183.104/search?q=cache:K9CN5mhf8UIJ:www.sg.pcm.gov.pt/pcuplei.htm+%22decreto+lei+n+460/77%22+site:gov.pt&hl=en, 11 November 2004.

Artigo 2.º (Condições gerais da declaração de utilidade pública)

1 - As associações ou fundações só podem ser declaradas de utilidade pública se, cumulativamente, se verificarem os seguintes requisitos:

a) Não limitarem o seu quadro de associados ou de beneficiários a estrangeiros, ou através de qualquer critério contrário ao do n.º 2 do artigo 13.º da Constituição;

b) Terem consciência da sua utilidade pública, fomentarem-na e desenvolverem-na, cooperando com a Administração na realização dos seus fins.

2 - As associações que funcionem primariamente em benefício dos associados podem ser declaradas de utilidade pública se pela sua própria existência fomentarem relevantemente actividades de interesse geral e reunirem os requisitos previstos no número anterior.

Artigo 3.º (Competência para a declaração de utilidade pública)

1 - A declaração de utilidade pública é da competência do Governo.

Artigo 4.º (Movimento da declaração de utilidade pública)

1 - As associações ou fundações que prossigam algum dos fins previstos no artigo 416.º do Código Administrativo podem ser declaradas de utilidade pública logo em seguida à sua constituição.

2 - As restantes associações ou fundações só podem ser declaradas de utilidade pública ao fim de cinco anos de efectivo e relevante funcionamento, salvo se especialmente dispensadas desse prazo em razão de circunstâncias excepcionais.

Artigo 5.º (Processo de declaração de utilidade pública)

1 - As pessoas colectivas que pretendam a declaração de utilidade pública requererão, em impresso próprio, essa declaração à entidade competente, oferecendo logo todas as provas necessárias ao ajuizamento da sua pretensão.

2 - O requerimento deve ser instruído também com um parecer fundamentado da câmara municipal da sua sede.

3 - A entidade competente pode solicitar pareceres adjuvantes a quaisquer entidades públicas ou privadas.

4 - O requerimento é dirigido ao Primeiro-Ministro.

Artigo 6.º (Concessão de declaração de utilidade pública)

1 - A concessão de utilidade pública pode ser dada com o aditamento das condições e recomendações que a entidade competente entenda por convenientes.

2 - A declaração de utilidade pública é publicada no Diário da República.

3 - Será entregue à pessoa colectiva o correspondente diploma, de modelo a aprovar por despacho do Primeiro-Ministro.

Artigo 7.º (Indeferimento do pedido de declaração de utilidade pública)

1 - Em caso de indeferimento do pedido de declaração de utilidade pública, cabe recurso, nos termos gerais.

2 - O pedido pode ser renovado logo que se mostrem satisfeitas as condições cuja falta tiver obstado ao deferimento, mas nunca antes de seis meses antes do indeferimento.

Artigo 8.º (Registo das pessoas colectivas de utilidade pública)

Será criado na Direcção-Geral dos Registos e do Notariado o registo das pessoas colectivas de utilidade pública.

Artigo 9.º (Isenções fiscais)

As pessoas colectivas de utilidade pública gozam das isenções fiscais que forem previstas na lei.

Artigo 10.º (Regalias)

As pessoas colectivas de utilidade pública beneficiam ainda das seguintes regalias:

a) Isenção de taxas de televisão e de rádio;

b) Sujeição à tarifa aplicável aos consumos domésticos de energia eléctrica;

c) Escalão especial no consumo de água, nos termos que vierem a ser definidos por portaria do Secretário de Estado dos Recursos Hídricos e Saneamento Básico;

d) Tarifa de grupo ou semelhante, quando exista, no modo de transporte público estatizado;

e) Isenção das taxas previstas na legislação sobre espectáculos e divertimentos públicos;

f) Publicação gratuita no Diário da República das alterações dos estatutos.

Artigo 11.º (Expropriações que visem o prosseguimento dos fins estatutários)

1 - Poderão ser consideradas de utilidade pública urgente as expropriações necessárias para que as pessoas colectivas de utilidade pública prossigam os seus fins estatutários.

2 - A declaração de utilidade pública destas expropriações resulta da aprovação pelo Ministro competente, ou entidade delegada, dos respectivos projectos, estudos prévios, planos ou anteplanos, ou mesmo esquemas preliminares, de obras a realizar.

3 - Compete à Administração, mediante parecer fundamentado da câmara municipal e dos órgãos da hierarquia da pessoa colectiva interessada, proceder, nos termos do Decreto-Lei n.º 845/76, de 11 de Dezembro, às expropriações destinadas aos fins a que se refere este artigo.

Artigo 12.º (Deveres)

São deveres das pessoas colectivas de utilidade pública, entre outros que constem dos respectivos estatutos ou da lei:

a) Enviar anualmente à Presidência do Conselho de Ministros o relatório e as contas dos exercícios findos;

b) Prestar as informações solicitadas por quaisquer entidades oficiais ou pelos organismos que nelas hierarquicamente superintendam;

c) Colaborar com o Estado e autarquias locais na prestação de serviços ao seu alcance e na cedência das suas instalações para a realização de actividades afins.

Artigo 13.º (Cessação dos efeitos da declaração de utilidade pública)

1 - A declaração de utilidade pública e as inerentes regalias cessam:

a) Com a extinção da pessoa colectiva;

b) Por decisão da entidade competente para a declaração, se tiver deixado de se verificar algum dos pressupostos desta.

2 - Da decisão referida na alínea b) do número anterior cabe recurso, nos termos gerais.

3 - As pessoas colectivas que tiverem sido objecto da decisão prevista na alínea b) do n.º 1 poderão recuperar a sua categoria de «utilidade pública» desde que voltem a preencher os requisitos exigidos para a sua concessão, mas não antes de decorrido um ano sobre a decisão referida.

Artigo 14.º (Pessoas já reconhecidas de utilidade pública)

1 - As pessoas a que, à data da publicação do presente diploma, tenha sido reconhecida utilidade pública mantêm esta qualificação, sujeitas, porém, ao disposto no presente diploma.

2 - O número anterior aplica-se às pessoas colectivas de utilidade pública administrativa.

3 - As pessoas colectivas referidas no n.º 1 devem requerer a sua inscrição no registo a que se refere o artigo 8.º

Artigo 15.º (Requerimento em impresso tipo)

1 - O modelo de impresso previsto no n.º 1 do artigo 5.º será definido por despacho do Primeiro-Ministro.

2 - Os impressos do modelo referido no n.º 1 constituirão exclusivo da Imprensa Nacional-Casa da Moeda.

Artigo 16.º (Dúvidas de interpretação e aplicação)

As dúvidas que se suscitem na interpretação e aplicação deste diploma serão resolvidas por despacho do Primeiro-Ministro.

15.3. Law on NPO

There is no specific law on NPO in Portugal.

15.4. Law on NGO

There is no specific law on NGO in Portugal. But the law of 14 October 1998 governs NGOs for Development "Lei n.o 66/98 de 14 de Outubro Aprova o estatuto das organizações não governamentais de cooperação para o desenvolvimento"[393].

Artigo 1.Objecto

O presente diploma define o estatuto das organizações não governamentais de cooperação para o desenvolvimento, adiante designadas por ONGD.

Artigo 2.Âmbito

Não se regem pelo presente diploma as ONGD que prossigam fins lucrativos, políticos, sindicais ou religiosos ou que, independentemente da sua natureza, desenvolvam actividades de cooperação militar.

Artigo 3. Natureza jurídica

As ONGD são pessoas colectivas de direito privado,sem fins lucrativos.

Artigo 4. Composição

As ONGD são constituídas por pessoas singulares ou colectivas de direito privado, com sede em Portugal.

Artigo 5. Constituição

As ONGD constituem-se e adquirem personalidade jurídica nos termos da lei geral.

Artigo 6. Objectivos

1 — São objectivos das ONGD a concepção, a execuçãoe o apoio a programas e projectos de cariz social,cultural, ambiental, cívico e económico, designadamente através de acções nos países em vias de desenvolvimento:

a) De cooperação para o desenvolvimento;

b) De assistência humanitária;

c) De ajuda de emergência;

d) De protecção e promoção dos direitos humanos.

2 — São ainda objectivos das ONGD a sensibilizaçãoda opinião pública para a ecessidade de um relacionamento cada vez mais empenhado com os países em vias de desenvolvimento, bem como a divulgação das suas realidades.

3 — As ONGD, conscientes de que a educação é um factor imprescindível para o desenvolvimento integral das sociedades e para a existência e o reforço da paz, assumem a promoção desse objectivo como uma dimensão fundamental da sua actividade.

4 — As ONGD desenvolvem as suas actividades no respeito pela Declaração Universal dos Direitos do Homem.

Artigo 7. Registo

Consideram-se abrangidas pelo presente diploma as ONGD que, para além de respeitarem o estipulado nos artigos anteriores, procedam ao seu registo junto do Ministério dos Negócios Estrangeiros, em que se incluam os seguintes elementos:

a) Actos constitutivos;

b) Estatutos;

c) Plano de actividades para o ano em curso;

d) Meios de financiamento.

Artigo 8. Reconhecimento

1 — O reconhecimento do estatuto de ONGD faz-se por um período de dois anos, após análise dos documentos mencionados no número anterior,

[393] http://www.ipad.mne.gov.pt/legislacao/Lei_66-1998-ongd.pdf

podendo o mesmo ser negado ou a sua atribuição ser revogada se, nos termos do artigo 16.o, se verificar alguma irregularidade.

2 — Para a decisão do reconhecimento do estatuto de ONGD, o Ministério dos Negócios Estrangeiros poderá solicitar um parecer não vinculativo, a emitir pelas plataformas nacionais das ONGD.

3 — O reconhecimento do estatuto, referido no n.o 1, deve ser comunicado aos interessados nos 30 dias seguintes à recepção de todos os documentos referidos no artigo anterior.

Artigo 9. Áreas de intervenção

As áreas de intervenção das ONGD são, nomeadamente:

a) Ensino, educação e cultura;

b) Assistência científica e técnica;

c) Saúde, incluindo assistência médica, medicamentosa e alimentar;

d) Emprego e formação profissional;

e) Protecção e defesa do meio ambiente;

f) Integração social e comunitária;

g) Desenvolvimento rural;

h) Reforço da sociedade civil, através do apoio a associações congéneres e associações de base nos países em vias de desenvolvimento;

i) Educação para o desenvolvimento, designadamente através da divulgação das realidades dos países em vias de desenvolvimento junto da opinião pública.

Artigo 10. Estatuto dos dirigentes das ONGD

Os dirigentes das ONGD gozam dos direitos consagrados nas alíneas seguintes:

a) Para o exercício das funções referidas no número anterior, os dirigentes das ONGD que sejam trabalhadores por conta de outrem têm direito a usufruir de um horário de trabalho flexível, em termos a acordar com a entidade patronal, sempre que a natureza da respectiva actividade laboral o permita;

b) As faltas dadas por motivos de comparência em reuniões em que os dirigentes exerçam representação ou com órgãos de soberania são consideradas justificadas, para todos os efeitos legais, até ao máximo de 10 dias de trabalho por ano e não implicam a perda das remunerações e regalias devidas;

c) Os dirigentes das ONGD que sejam estudantes gozam das prerrogativas idênticas às previstas no Decreto-Lei n.o 152/91, de 23 de Abril, com as necessárias adaptações.

Artigo 11. Ligação ao Estado

1 — O Estado apoia e valoriza o contributo das ONGD nas relações e práticas de cooperação com os países em vias de desenvolvimento.

2 — O Estado considera que o seu relacionamento com as ONGD se deve fazer, nomeadamente, através de contratos quadro.

3 — O Estado pode ainda apoiar as ONGD através de ajuda técnica ou financeira a programas e projectos desenvolvidos por estas, desde que compreendidos nos artigos 6.o e 9.o do presente diploma, mesmo quando as ONGD em questão não sejam subscritoras dos contratos quadro referidos no número anterior.

4 — O Estado pode solicitar a intervenção técnica das ONGD em programas concebidos e executados, no todo ou em parte, por organismos públicos de cooperação e desenvolvimento.

5 — O apoio do Estado não pode constituir limitação ao direito de livre actuação das ONGD.

6 — O direito de participação das ONGD na definição das políticas nacionais e internacionais de cooperação exerce-se através da sua representação nas instâncias consultivas com competência na área da cooperação.

7 — Fora do território nacional, as representações diplomáticas portuguesas são o interlocutor institucional representativo do Estado, para efeitos do relacionamento com as ONGD.

Artigo 12. Utilidade pública

As ONGD registadas nos termos do presente diploma adquirem automaticamente a natureza de pessoas colectivas de utilidade pública, com dispensa do registo edemais obrigações previstas no Decreto-Lei n.o 460/77, de 7 de Novembro, sem prejuízo do disposto no artigo 12.o do referido diploma.

Artigo 13. Mecenato para a cooperação

Aos donativos em dinheiro ou em espécie concedidos às ONGD e que se destinem a financiar projectos de interesse público, previamente reconhecidos como tal pelo Ministério dos Negócios Estrangeiros, será aplicável, sem acumulação, o regime do mecenato cultural previsto nos Códigos do IRS e do IRC.

Artigo 14. Isenção de emolumentos

As ONGD estão isentas do pagamento dos emolumentos notariais devidos pelas respectivas escrituras de constituição ou de alteração dos estatutos.

Artigo 15. Fiscalidade

1 — As ONGD têm direito às isenções fiscais atribuídas pela lei às pessoas colectivas de utilidade pública.

2 — Nas transmissões de bens e na prestação de services que efectuem, as ONGD beneficiam das isenções de IVA previstas para os organismos sem fins lucrativos.

3 — As ONGD beneficiam das regalias previstas no artigo 10.o do Decreto-Lei n.o 460/77, de 7 de Novembro.

Artigo 16. Fiscalização

Os Ministérios dos Negócios Estrangeiros e das Finanças, bem como os demais ministérios no âmbito da respectiva competência sectorial, poderão ordenar a realização de inquéritos, sindicâncias e inspecções às ONGD que tenham solicitado a sua inscrição, ou estejam inscritas no Ministério dos Negócios Estrangeiros, ao abrigo do presente diploma.

Artigo 17. Representação

1 — As ONGD abrangidas pelo disposto no presente diploma podem associar-se em plataformas, o que, todavia, não limita a intervenção autónoma das organizações na prossecução dos seus fins.

2 — As plataformas nacionais participadas por representantes de ONGD abrangidas pelo presente diploma serão representadas nos órgãos consultivos da cooperação oficial portuguesa pelas respectivas direcções.

Artigo 18. Disposições transitórias

1 — Para efeitos do estipulado no presente diploma e para que possam pelo mesmo ser abrangidas, as ONGD devem proceder em conformidade com o artigo 7.o, dispondo para tal de um prazo de 60 dias a contar da data de entrada em vigor do presente diploma, independentemente de registos anteriores.

2 — As ONGD que não cumpram o disposto no número anterior deixam de ser consideradas ONGD para efeitos de aplicação do presente diploma.

Artigo 19. Norma revogatória

É revogada a Lei n.o 19/94, de 24 de Maio. Aprovada em 29 de Junho de 1998.

O Presidente da Assembleia da República, António de Almeida Santos.

Promulgada em 24 de Setembro de 1998.

Publique-se. O Presidente da República, JORGE SAMPAIO. Referendada em 30 de Setembro de 1998. O Primeiro-Ministro, António Manuel de Oliveira Guterres.

15.5. Law on other legal forms

15.6. Other laws

15.6.1. Eligiblity criteria for NGO for Development co-financing by the Ministry of Foreign Affairs

Eligiblity criteria for NGO for Development co-financing by the Ministry of Foreign Affairs "Critérios de Elegibilidade aplicados às ONGD"[394]

A. São considerados critérios indispensáveis

[394] http://www.ipad.mne.gov.pt/images/stories/ongs/regras.pdf, 31 August 2005.

A1. A ONGD estar devidamente registada junto do IPAD, de acordo com a Lei 66/98 de 14 de Outubro.

A2. A ONGD ter um mínimo de 3 anos de experiência na execução de projectos de Cooperação para o Desenvolvimento ou apresentar elementos susceptíveis de facilitar a avaliação da sua capacidade de os implementar, nomeadamente em termos de monitorização, avaliação e controlo de gestão financeira, incluindo a participação em processos de parceria capazes de garantir uma aprendizagem mútua e a qualidade dos meios de controlo.

A3. A ONGD ter os seus compromissos com o IPAD regularizados, no que diz respeito à apresentação de relatórios e à prestação de contas relativos a apoios anteriores, de modo a que esteja assegurada uma relação transparente com o financiador.

A4. A ONGD ter em dia os seus compromissos com a Segurança Social.

B. São considerados critérios preferenciais

B1. A ONGD ter um conhecimento dos sectores de intervenção nos quais se propõe actuar, de forma a possibilitar a avaliação da sua capacidade de executar projectos nos respectivos âmbitos.

B2. A ONGD ter ligações a organizações e instituições nos países em que pretende desenvolver os projectos, para que seja possível avaliar a sua capacidade de estabelecer parcerias a nível local.

B3. A ONGD ter um plano estratégico de intervenção. Critérios de Elegibilidade aplicados aos Projectos de Cooperação para o Desenvolvimento Princípios orientadores O IPAD reconhece o papel das ONGD no apoio e reforço da sociedade civil na defesa dos direitos humanos, da boa governação, do aprofundamento do processo democrático e do combate à pobreza, considerando-se prioritário que os projectos por elas apresentados dêem resposta às necessidades básicas das populações desfavorecidas dos Países em Desenvolvimento.

16. Spain

16.1. Law on Associations

16.1.1. Associations Act

Associations are governed by the Associations Act of 24 December 1964 "Ley 191/1964, de 24 de diciembre, de asociaciones"[395].

Artículo 1.° Libertad de asociación

1. La libertad de asociación reconocida en el párrafo primero del artículo 16 del Fuero de los Españoles se ejercerá de acuerdo con lo establecido en la presente Ley, para fines lícitos y determinados.

2. Se entienden determinados los fines de la asociación cuando no exista duda respecto a las actividades que efectivamente se propone desarrollar, según se deduzca de los estatutos y de las cláusulas del acta fundacional.

3. Se entiende por fines ilícitos los contrarios a los Principios Fundamentales del Movimiento y demás Leyes fundamentales, los sancionados por las leyes penales, los que atenten contra la moral, el orden público y cualesquiera otros que impliquen un peligro para la unidad política y social de España.

Artículo 2.° Ámbito de aplicación

Quedan excluidas del ámbito de aplicación de esta Ley las entidades que se rijan por las disposiciones relativas al contrato de sociedad, según se define en las Leyes, y se constituyan con arreglo al Derecho Civil o Mercantil, así como, sin perjuicio de lo que en cada caso establezca la presente Ley, las asociaciones siguientes:

1. Las Asociaciones constituidas según el Derecho Canónico a que se refiere el artículo cuarto del Concordato vigente y las de la Acción Católica española, en cuanto desarrollen fines de apostolado religioso, manteniéndose por lo que se refiere a actividades de otro género, de acuerdo con el artículo 34 de dicho texto Concordado, en el ámbito de esta Ley,

2. Las que se constituyan conforme a lo previsto en el párrafo segundo del artículo 16 del Fuero de los Españoles, las reguladas por la legislación

[395] http://civil.udg.es/normacivil/estatal/persona/PJ/L191-64.htm, 23 November 2004.

sindical y las restantes sujetas al régimen jurídico del Movimiento.

3. Las de funcionarios, Civiles y militares, y las del personal civil empleado en los establecimientos de las Fuerzas Armadas, se regirán, en su caso, por sus leyes especiales.

4. Cualesquiera otras Asociaciones reguladas por Leyes especiales.

Artículo 3.° Constitución de las Asociaciones

1. La libertad de asociación se ejercitará jurídicamente mediante acta en que conste el propósito de varias personas naturales que, con capacidad de obrar, acuerden voluntariamente servir un fin determinado y lícito según sus Estatutos.

2. Los Estatutos, además de las condiciones lícitas que establezcan, deberán regular los siguientes extremos:

1.º Denominación, que no podrá ser idéntica a la de otras Asociaciones ya registradas, ni tan semejante que pueda inducir a confusiones.

2.° Fines determinados que se propone.

3.° Domicilio principal y, en su caso,,otros locales de la Asociación.

4.° Ámbito territorial de acción previsto para la actividad.

5.° Órganos directivos y forma de administración.

6.° Procedimiento de admisión y pérdida de la cualidad de socio.

7.º Derechos y deberes de los mismos.

8.° Patrimonio fundacional, recursos económicos previstos y límites del presupuesto anual.

9.° Aplicación que haya de darse al patrimonio social en caso de disolución.

3. Dentro del plazo de cinco días a contar desde la fecha del acta fundacional los socios fundadores deberán remitir al Gobierno Civil de la provincia en ejemplar triplicado firmado por los mismos, copia de aquel acta con los Estatutos.

4. Cuando el patrimonio de la Asociación no sea superior a la cantidad de un millón de pesetas y el límite inicial de su presupuesto anual a la de cien mil pesetas, y la actividad social prevista no rebase los límites provinciales, corresponderá al Gobernador, previo los informes que según la índole de la Asociación sean preceptivos en cada caso, dictar por escrito resolución motivada decidiendo acerca de la licitud y determinación de los fines a que se refiere el párrafo uno de este artículo, visando los Estatutos o, en su caso, recabando las rectificaciones que fueran precisas con arreglo a las disposiciones previstas en el párrafo 2 del presente artículo. Los Gobernadores civiles, no obstante, cuando se susciten dudas acerca de los extremos arriba examinados, o atendidas la naturaleza y característica de las Asociaciones, elevarán el expediente al Ministro de la Gobernación, en la forma y a los efectos prevenidos en el párrafo siguiente.

5. Dentro del plazo de treinta días el Gobernador elevara al Ministerio de la Gobernación, convenientemente informado, el expediente relativo a la calificación de los fines de las Asociaciones cuando el patrimonio rebase la cifra de un millón de pesetas, o el limite presupuestario inicial sea superior a las cien mil pesetas anuales, o cuando las actividades sociales previstas rebasen el ámbito provincial. Previos los informes que según la índole de la Asociación sean preceptivos en cada caso, corresponderá al Ministro de la Gobernación dictar por sí o someter al Consejo de Ministros la pertinente resolución acerca de la licitud y determinación de los fines de la Asociación, y, en su caso, visar igualmente los Estatutos. Igual facultad corresponderá al Ministro de la Gobernación con ocasión de los recursos de alzada interpuestos contra los actos y resoluciones de los Gobernadores civiles.

6. Cuando la Asociación cumpla los requisitos que se establecen en los párrafos anteriores y sus fines no puedan considerarse como ilícitos o indeterminados con arreglo a lo dispuesto en el artículo 1.º, párrafos segundo y tercero, de la presente Ley, la autoridad gubernativa no podrá denegar el reconocimiento de la Asociación.

Artículo 4.º Asociaciones declaradas de "utilidad pública"

1. Las Asociaciones dedicadas a fines asistenciales, educativos, culturales, deportivos o cualesquiera otros fines que tiendan a promover el bien común, podrán ser reconocidas como de "utilidad pública".

2. Las Asociaciones reconocidas de "utilidad pública" tendrán derecho a utilizar esta mención en todos sus documentos y gozarán de las exenciones y subvenciones y demás privilegios de orden económico, fiscal y administrativo que en cada caso se acuerden.

3. La declaración de "utilidad pública" se hará por acuerdo del Consejo de Ministros a propuesta del Ministerio de la Gobernación, previo informe del Departamento u Organismos interesados y con los requisitos y procedimientos que reglamentariamente se determinen.

4. Respecto de las Asociaciones de "utilidad pública" que persigan análogas finalidades sociales, podrá acordarse en Consejo de Ministros de oficio o a instancia de parte interesada la constitución y Estatutos de Federaciones de las mismas. En el Decreto de aprobación se especificará si la agrupación en la Federación correspondiente será requisito condicionante de ulteriores reconocimientos de Asociaciones de "utilidad pública" con aquellos fines.

Artículo 5.° Registro de Asociaciones

1. En los Gobiernos Civiles existirá un Registro Provincial de Asociaciones, en el que se inscribirán a los efectos que en cada caso procedan todas las que se domicilien en cada provincia.

2. En el Ministerio de la Gobernación existirá un Registro Nacional de Asociaciones, en el que se inscribirán todas las Asociaciones, a los efectos que en cada caso procedan, sea cual fuere su régimen o su ámbito territorial de actuación, patrimonio y presupuesto.

3. La inscripción en los Registros nacional y provinciales se verificará, respecto de las Asociaciones sometidas al ámbito de aplicación de esta Ley, de oficio y dentro del plazo de un mes, a contar desde la fecha de las resoluciones a que se refieren los párrafos cuarto y quinto del artículo 3.°, y en los casos de asociaciones excluidas por comunicación de la autoridad competente, dentro del mismo plazo a contar desde que las Asociaciones quedaron válidamente constituidas.

Tanto los Registros provinciales como el Registro nacional de Asociaciones serán públicos.

Artículo 6.º Régimen de las Asociaciones

1. El régimen de las Asociaciones reguladas por la presente Ley se determinará por sus propios Estatutos y los acuerdos válidamente adoptados por su Asamblea general y Órganos directivos dentro de la esfera de su respectiva competencia. En lo en ellos no previsto se estará a lo establecido en esta Ley y en las disposiciones reglamentarias que se dicten para la aplicación de la misma.

2. El Órgano supremo de las Asociaciones será la Asamblea general, integrada por los socios, que adoptarán sus acuerdos por el principio mayoritario, y que deberá ser convocada al menos en sesión ordinaria, una vez al año para aprobación de cuentas y presupuesto, y en sesión extraordinaria, cuando así se establezca en los Estatutos y con las formalidades que en los mismos se determinen.

3. Sin perjuicio de lo dispuesto en el párrafo anterior, las Asociaciones estarán regidas por una Junta directiva, la cual se pondrá en conocimiento del Gobernador de la provincia la composición de los Órganos rectores en el plazo de cinco días a partir de la fecha de su aprobación.

4. La modificación de los Estatutos deberá aprobarse en Asamblea general extraordinaria, siguiendo ulteriormente los trámites establecidos por los artículos 3.º y 5.º de esta Ley.

5. En toda Asociación se llevará un fichero y un libro registro de los nombres, apellidos, profesión y domicilio de los asociados. En lo referente al resto de régimen de libros, publicación de impresos y circulares, y en general, lo relacionado con el aspecto orgánico de las Asociaciones sometidas a esta Ley, será objeto de determinación reglamentada.

6. Sin perjuicio de lo dispuesto en el artículo 10, los acuerdos y actuaciones de las Asociaciones que sean contrarias a los Estatutos, podrán ser suspendidos o anulados por la autoridad judicial, a instancia de parte interesada o del Ministerio Fiscal.

7. Las Asociaciones se disolverán por voluntad de los socios, por las causas determinadas en el artículo 39 del Código Civil y por sentencia judicial.

Artículo 7.° Reuniones

1. Una vez inscritas las Asociaciones, podrán utilizar el local que designen como domicilio social, con sujeción a las Leyes y Reglamentos.

2. Las Asociaciones regidas por esta Ley deberán comunicar al Gobernador civil de la provincia, con setenta y dos horas de antelación, la fecha y hora en que hayan de celebrarse las sesiones generales.

Artículo 8.° Acceso de los representantes de la autoridad

Sin perjuicio de lo dispuesto con carácter general en la Ley de Orden Público, la autoridad gubernativa tendrá acceso, por representantes especialmente designados, al local en que se celebren las reuniones y a los libros y documentos que se lleven en las Asociaciones reguladas por esta Ley.

Artículo 9.º Liberalidades en favor de las Asociaciones

1. Sin perjuicio de las modificaciones estatutarias que impliquen la alteración de su presupuesto o patrimonio, las Asociaciones reguladas por esta Ley podrán recibir libremente donaciones a título gratuito en cantidades que no excedan de cincuenta mil pesetas al año. Para cantidades que oscilen entre cincuenta mil y doscientas cincuenta mil necesitarán expresa autorización del Gobernador civil. Para las que rebasen durante el año esta última cifra, será necesaria autorización expresa del Ministerio de la Gobernación.

2. Quedan exceptuadas de las formalidades dispuestas en el párrafo anterior las subvenciones procedentes de los Presupuestos Generales del Estado y de sus Organismos autónomos, de las Corporaciones Locales, de los Organismos dependientes del Movimiento y, en general, todas aquellas liberalidades que se realicen en favor de las Asociaciones reconocidas de "utilidad pública".

Artículo 10.º Disciplina de las Asociaciones

1. La autoridad gubernativa suspenderá de oficio o a instancia de parte las actividades de aquellas Asociaciones reguladas por la presente Ley que no se hayan constituido conforme a lo en ella prevenido.

2. Las mismas autoridades podrán decretar la suspensión de las Asociaciones sometidas al ámbito de esta Ley, por plazo no superior a tres meses, cuando no atemperen su funcionamiento a lo dispuesto en la misma.

3. Pueden ser asimismo objeto de suspensión los actos o acuerdos de estas asociaciones que adolezcan de los mismos defectos a que hace referencia el apartado anterior, o incurran en la ilicitud prevista por el párrafo 3 del artículo l.º de esta Ley.

4. Sin perjuicio de lo dispuesto con carácter general en la vigente Ley de Orden Público, podrá asimismo la autoridad competente suspender las Asociaciones de cualquier régimen con ocasión de actos ilícitos incluidos en el artículo l.º, párrafo 3, de esta Ley.

5. Corresponde a los Tribunales confirmar o revocar los acuerdos gubernativos y decretar si procede la disolución. A estos efectos los acuerdos de suspensión serán comunicados a la autoridad judicial competente dentro del término de tres días.

6. En los propios supuestos contemplados en los anteriores apartados, y sin perjuicio de lo establecido en el artículo 19 de la citada Ley de Orden Público, los Gobernadores civiles podrán imponer sanciones de hasta veinticinco mil pesetas, y el Ministro de la Gobernación hasta quinientas mil.

Artículo 11. Procedimiento

1. En todas las cuestiones que en vía administrativa se susciten sobre el régimen de Asociaciones, será aplicable la Ley de Procedimiento Administrativo, y en su caso, la de lo Contencioso-administrativo.

2. En todas las demás cuestiones en que no sea parte la Administración, será competente la jurisdicción ordinaria.

16.1.2. Law on Public Utlity entities

Law on Public Utlity entities of 22 March 2002 "Ley organica 1/2002, de 22 de marzo, reguladora del derecho de asociacion"[396].

Artículo 31. Medidas de fomento.

1. Las Administraciones públicas, en el ámbito de sus respectivas competencias, promoverán y facilitarán el desarrollo de las asociaciones y federaciones, confederaciones y uniones que persigan finalidades de interés general, respetando siempre la libertad y autonomía frente a los poderes públicos. Asimismo, las Administraciones públicas ofrecerán la colaboración necesaria a las personas que pretendan emprender cualquier proyecto asociativo.

2. La Administración General del Estado, en el ámbito de su competencia, fomentará el establecimiento de mecanismos de asistencia, servicios de información y campañas de divulgación y reconocimiento de las actividades de las asociaciones que persigan objetivos de interés general.

[396] http://www.mir.es/derecho/lo/lo_12002.htm#art32, 29 November 2004.

3. Las asociaciones que persigan objetivos de interés general podrán disfrutar, en los términos y con el alcance que establezcan el Ministerio o Ministerios competentes, de ayudas y subvenciones atendiendo a actividades asociativas concretas.

Las subvenciones públicas concedidas para el desarrollo de determinadas actividades y proyectos sólo podrán destinarse a ese fin y estarán sujetas a la normativa general de subvenciones públicas.

4. No beneficiarán a las entidades asociativas no inscritas las garantías y derechos regulados en el presente artículo.

5. Las Administraciones públicas, en el ámbito de sus competencias, podrán establecer con las asociaciones que persigan objetivos de interés general, convenios de colaboración en programas de interés social

Artículo 32. Asociaciones de utilidad pública.

1. A iniciativa de las correspondientes asociaciones, podrán ser declaradas de utilidad pública aquellas asociaciones en las que concurran los siguientes requisitos:

a) Que sus fines estatutarios tiendan a promover el interés general, en los términos definidos por el artículo 31.3 de esta Ley, y sean de carácter cívico, educativo, científico, cultural, deportivo, sanitario, de promoción de los valores constitucionales, de promoción de los derechos humanos, de asistencia social, de cooperación para el desarrollo, de promoción de la mujer, de promoción y protección de la familia, de protección de la infancia, de fomento de la igualdad de oportunidades y de la tolerancia, de defensa del medio ambiente, de fomento de la economía social o de la investigación, de promoción del voluntariado social, de defensa de consumidores y usuarios, de promoción y atención a las personas en riesgo de exclusión por razones físicas, sociales, económicas o culturales, y cualesquiera otros de similar naturaleza. (Modificado por la Ley 62/2003, de 30 de diciembre)

b) Que su actividad no esté restringida exclusivamente a beneficiar a sus asociados, sino abierta a cualquier otro posible beneficiario que reúna las condiciones y caracteres exigidos por la índole de sus propios fines.

c) Que los miembros de los órganos de representación que perciban retribuciones no lo hagan con cargo a fondos y subvenciones públicas.

No obstante lo dispuesto en el párrafo anterior, y en los términos y condiciones que se determinen en los Estatutos, los mismos podrán recibir una retribución adecuada por la realización de servicios diferentes a las funciones que les corresponden como miembros del órgano de representación.

d) Que cuenten con los medios personales y materiales adecuados y con la organización idónea para garantizar el cumplimiento de los fines estatutarios.

e) Que se encuentren constituidas, inscritas en el Registro correspondiente, en funcionamiento y dando cumplimiento efectivo a sus fines estatutarios, ininterrumpidamente y concurriendo todos los precedentes requisitos, al menos durante los dos años inmediatamente anteriores a la presentación de la solicitud.

2. Las federaciones, confederaciones y uniones de entidades contempladas en esta Ley podrán ser declaradas de utilidad pública, siempre que los requisitos previstos en el apartado anterior se cumplan, tanto por las propias federaciones, confederaciones y uniones, como por cada una de las entidades integradas en ellas.

Artículo 33. Derechos de las asociaciones de utilidad pública.

Las asociaciones declaradas de utilidad pública tendrán los siguientes derechos:

a) Usar la mención "Declarada de Utilidad Pública" en toda clase de documentos, a continuación de su denominación.

b) Disfrutar de las exenciones y beneficios fiscales que las leyes reconozcan a favor de las mismas, en los términos y condiciones previstos en la normativa vigente.

c) Disfrutar de beneficios económicos que las leyes establezcan a favor de las mismas.

d) Asistencia jurídica gratuita en los términos previstos en la legislación específica.

Artículo 34. Obligaciones de las asociaciones de utilidad pública.

1. Las asociaciones de utilidad pública deberán rendir las cuentas anuales del ejercicio anterior en el plazo de los seis meses siguientes a su finalización, y presentar una memoria descriptiva de las actividades realizadas durante el mismo ante el organismo encargado de verificar su

constitución y de efectuar su inscripción en el Registro correspondiente, en el que quedarán depositadas. Dichas cuentas anuales deben expresar la imagen fiel del patrimonio, de los resultados y de la situación financiera, así como el origen, cuantía, destino y aplicación de los ingresos públicos percibidos.

Reglamentariamente se determinará en qué circunstancias se deberán someter a auditoría las cuentas anuales.

2. Asimismo, deberán facilitar a las Administraciones públicas los informes que éstas les requieran, en relación con las actividades realizadas en cumplimiento de sus fines.

Artículo 35. Procedimiento de declaración de utilidad pública.

1. La declaración de utilidad pública se llevará a cabo en virtud de Orden del Ministro que se determine reglamentariamente, previo informe favorable de las Administraciones públicas competentes en razón de los fines estatutarios y actividades de la asociación, y, en todo caso, del Ministerio de Hacienda.

2. La declaración será revocada, previa audiencia de la asociación afectada e informe de las Administraciones públicas competentes, por Orden del Ministro que se determine reglamentariamente, cuando las circunstancias o la actividad de la asociación no respondan a las exigencias o requisitos fijados en el artículo 32, o los responsables de su gestión incumplan lo prevenido en el artículo anterior.

3. El procedimiento de declaración y revocación se determinará reglamentariamente. El vencimiento del plazo de resolución, en el procedimiento de declaración, sin haberse adoptado resolución expresa tendrá efectos desestimatorios.

4. La declaración y revocación de utilidad pública se publicará en el "Boletín Oficial del Estado".

Artículo 36. Otros beneficios.

Lo dispuesto en el presente capítulo se entiende sin perjuicio de la competencia de las Comunidades Autónomas para la declaración de utilidad pública, a efectos de aplicar los beneficios establecidos en sus respectivos ordenamientos jurídicos, a las asociaciones que principalmente desarrollen sus funciones en su ámbito territorial, conforme al procedimiento que las propias Comunidades Autónomas determinen y con respeto a su propio ámbito de competencias.

16.2. Law on Foundations

Foundations are ruled by the Foundations Act 50/2002 "Ley 50/2002, de 26 diciembre, de Fundaciones"[397].

Artículo 2. Concepto.

1. Son fundaciones las organizaciones constituidas sin fin de lucro que, por voluntad de sus creadores, tienen afectado de modo duradero su patrimonio a la realización de fines de interés general.

2. Las fundaciones se rigen por la voluntad del fundador, por sus Estatutos y, en todo caso, por la Ley.

Artículo 3. Fines y beneficiarios.

1. Las fundaciones deberán perseguir fines de interés general, como pueden ser, entre otros, los de defensa de los derechos humanos, de las víctimas del terrorismo y actos violentos, asistencia social e inclusión social, cívicos, educativos, culturales, científicos, deportivos, sanitarios, laborales, de fortalecimiento institucional, de cooperación para el desarrollo, de promoción del voluntariado,de promoción de la acción social, de defensa del medio ambiente, y de fomento de la economía social, de promoción y atención a las personas en riesgo de exclusión por razones físicas, sociales o culturales, de promoción de los valores constitucionales y defensa de los principios democráticos, de fomento de la tolerancia, de desarrollo de la sociedad de la información, o de investigación científica y desarrollo tecnológico.

2. La finalidad fundacional debe beneficiar a colectividades genéricas de personas. Tendrán esta consideración los colectivos de trabajadores de una o varias empresas y sus familiares.

3. En ningún caso podrán constituirse fundaciones con la finalidad principal de destinar sus prestaciones al fundador o a los patronos, a sus cónyuges o personas ligadas con análoga relación de afectividad, o a sus parientes hasta el cuarto grado inclusive, así como a personas jurídicas singularizadas que no persigan fines de interés general.

4. No se incluyen en el apartado anterior las fundaciones cuya finalidad exclusiva o principal sea la conservación y restauración de bienes del

[397] http://wwwn.mec.es/mecd/fundaciones/leg/docs/ley_fundaciones_boe271202.pdf, 25 November 2004.

patrimonio histórico español, siempre que cumplan las exigencias de la Ley 16/1985, de 25 de junio, del Patrimonio Histórico Español, en particular respecto de los deberes de visita y exposición pública de dichos bienes.

Artículo 4. Personalidad jurídica.

1. Las fundaciones tendrán personalidad jurídica desde la inscripción de la escritura pública de su constitución en el correspondiente Registro de Fundaciones.

La inscripción sólo podrá ser denegada cuando dicha escritura no se ajuste a las prescripciones de la ley.

2. Sólo las entidades inscritas en el Registro al que se refiere el apartado anterior, podrán utilizar la denominación de «Fundación».

Artículo 8. Capacidad para fundar.

1. Podrán constituir fundaciones las personas físicas y las personas jurídicas, sean éstas públicas o privadas.

2. Las personas físicas requerirán de capacidad para disponer gratuitamente, inter vivos o mortis causa, de los bienes y derechos en que consista la dotación.

3. Las personas jurídicas privadas de índole asociativa requerirán el acuerdo expreso del órgano competente para disponer gratuitamente de sus bienes, con arreglo a sus Estatutos o a la legislación que les resulte aplicable. Las de índole institucional deberán contar con el acuerdo de su órgano rector.

4. Las personas jurídico-públicas tendrán capacidad para constituir fundaciones, salvo que sus normas reguladoras establezcan lo contrario.

Artículo 9. Modalidades de constitución.

1. La fundación podrá constituirse por actos «inter vivos» o «mortis causa».

2. La constitución de la fundación por acto «inter vivos» se realizará mediante escritura pública, con el contenido que determina el artículo siguiente.

3. La constitución de la fundación por acto «mortis causa» se realizará estamentariamente, cumpliéndose en el testamento los requisitos establecidos en el artículo siguiente para la escritura de constitución.

4. Si en la constitución de una fundación por acto «mortis causa» el testador se hubiera limitado a establecer su voluntad de crear una fundación y de disponer de los bienes y derechos de la dotación, la escritura pública en la que se contengan los demás requisitos exigidos por esta Ley se otorgará por el albacea testamentario y, en su defecto, por los herederos testamentarios. En caso de que éstos no existieran, o incumplieran esta obligación, la escritura se otorgará por el Protectorado, previa autorización judicial.

Artículo 10. Escritura de constitución.

La escritura de constitución de una fundación deberá contener, al menos, los siguientes extremos:

a) El nombre, apellidos, edad y estado civil del fundador o fundadores, si son personas físicas, y su denominación o razón social, si son personas jurídicas, y, en ambos casos, su nacionalidad y domicilio y número de identificación fiscal.

b) La voluntad de constituir una fundación.

c) La dotación, su valoración y la forma y realidad de su aportación.

d) Los Estatutos de la fundación, cuyo contenido se ajustará a las prescripciones del artículo siguiente.

e) La identificación de las personas que integran el Patronato, así como su aceptación si se efectúa en el momento fundacional.

Artículo 11. Estatutos.

1. En los Estatutos de la fundación se hará constar:

a) La denominación de la entidad.

b) Los fines fundacionales.

c) El domicilio de la fundación y el ámbito territorial en que haya de desarrollar principalmente sus actividades.

d) Las reglas básicas para la aplicación de los recursos al cumplimiento de los fines fundacionales y para la determinación de los beneficiarios.

e) La composición del Patronato, las reglas para la designación y sustitución de sus miembros, las causas de su cese, sus atribuciones y la forma de deliberar y adoptar acuerdos.

f) Cualesquiera otras disposiciones y condiciones lícitas que el fundador o fundadores tengan a bien establecer.

2. Toda disposición de los Estatutos de la fundación o manifestación de la voluntad del fundador que sea contraria a la Ley se tendrá por no puesta, salvo que afecte a la validez constitutiva de aquélla. En este ultimo caso, no procederá la inscripción de la fundación en el correspondiente Registro de Fundaciones.

Artículo 12. Dotación.

1. La dotación, que podrá consistir en bienes y derechos de cualquier clase, ha de ser adecuada y suficiente para el cumplimiento de los fines fundacionales. Se presumirá suficiente la dotación cuyo valor económico alcance los 30.000 euros. Cuando la dotación sea de inferior valor, el fundador deberá justificar su adecuación y suficiencia a los fines fundacionales mediante la presentación del primer programa de actuación, junto con un estudio económico que acredite su viabilidad utilizando exclusivamente dichos recursos.

2. Si la aportación es dineraria, podrá efectuarse en forma sucesiva. En tal caso, el desembolso inicial será, al menos, del 25 por 100, y el resto se deberá hacer efectivo en un plazo no superior a cinco años, contados desde el otorgamiento de la escritura pública de constitución de la fundación. Si la aportación no es dineraria, deberá incorporarse a la escritura de constitución tasación realizada por un experto independiente. En uno y otro caso, deberá acreditarse o garantizarse la realidad de las aportaciones ante el notario autorizante, en los términos que reglamentariamente se establezcan.

3. Se aceptará como dotación el compromiso de aportaciones de terceros, siempre que dicha obligación conste en títulos de los que llevan aparejada ejecución.

4. Formarán también parte de la dotación los bienes y derechos de contenido patrimonial que durante la existencia de la fundación se aporten en tal concepto por el fundador o por terceras personas, o que se afecten por el Patronato, con carácter permanente, a los fines fundacionales.

5. En ningún caso se considerará dotación el mero propósito de recaudar donativos.

Artículo 13. Fundación en proceso de formación.

1. Otorgada la escritura fundacional, y en tanto se procede a la inscripción en el correspondiente Registro de Fundaciones, el Patronato de la fundación realizará, además de los actos necesarios para la inscripción, únicamente aquellos otros que resulten indispensables para la conservación de su patrimonio y los que no admitan demora sin perjuicio para la fundación, los cuales se entenderán automáticamente asumidos por ésta cuando obtenga personalidad jurídica.

2. Transcurridos seis meses desde el otorgamiento de la escritura pública fundacional sin que los patronos hubiesen instado la inscripción en el correspondiente Registro de Fundaciones, el Protectorado procederá a cesar a los patronos, quienes responderán solidariamente de las obligaciones contraídas en nombre de la fundación y por los perjuicios que ocasione la falta de inscripción. Asimismo, el Protectorado procederá a nombrar nuevos patronos, previa autorización judicial, que asumirán la obligación de inscribir la fundación en el correspondiente Registro de Fundaciones.

Artículo 27. Destino de rentas e ingresos.

1. A la realización de los fines fundacionales deberáser destinado, al menos, el 70 por 100 de los resultados de las explotaciones económicas que se desarrollen yde los ingresos que se obtengan por cualquier otro concepto, deducidos los gastos realizados, para la obtención de tales resultados o ingresos, debiendo destinar el resto a incrementar bien la dotación o bien las reservas según acuerdo del Patronato. Los gastos realizados para la obtención de tales ingresos podrán estar integrados, en su caso, por la parte proporcional de los gastos por servicios exteriores, de los gastos de personal, de otros gastos de gestión, de los gastos financieros y de los tributos, en cuanto que contribuyan a la obtención de los ingresos, excluyendo de este cálculo los gastos realizados para el cumplimiento de los fines estatutarios. El plazo para el cumplimiento de esta obligación será el comprendido entre el inicio del ejercicio en que se hayan obtenido los respectivos resultados e ingresos y los cuatro años siguientes al cierre de dicho ejercicio. En el cálculo de los ingresos no se incluirán las aportaciones o donaciones recibidas en concepto de dotación patrimonial en el momento de la constitución o en un momento posterior, ni los ingresos obtenidos en la trans misión onerosa de bienes inmuebles en los que la entidad desarrolle la actividad propia de su objeto o finalidad específica, siempre que el importe de la citada transmisión se reinvierta en bienes

inmuebles en los que concurra dicha circunstancia.

2. Se entiende por gastos de administración los directamente ocasionados por la administración de los bienes y derechos que integran el patrimonio de la fundación, y aquellos otros de los que los patronos tienen derecho a resarcirse de acuerdo con el artículo 15.4. Reglamentariamente se determinará la proporción máxima de dichos gastos.

16.3. Law on NPO

NGOs are governed by the Law on patronage "Ley 49/2002, de 23 diciembre, de Régimen fiscal de las entidades sin fines lucrativos y de los incentivos fiscales al mecenazgo"[398].

Artículo 1.Objeto y ámbito de aplicación.

1. Esta Ley tiene por objeto regular el régimen fiscal de las entidades sin fines lucrativos definidas en la misma, en consideración a su función social, actividades y características.

De igual modo, tiene por objeto regular los incentivos fiscales al mecenazgo. A efectos de esta Ley, se entiende por mecenazgo la participación privada en la realización de actividades de interés general.

2. En lo no previsto en esta Ley se aplicarán las normas tributarias generales.

3. Lo establecido en esta Ley se entenderá sin perjuicio de los regímenes tributarios forales de Concierto y Convenio Económico en vigor, respectivamente, en los Territorios Históricos del País Vasco y en la Comunidad Foral de Navarra y sin perjuicio de lo dispuesto en los tratados y convenios internacionales que hayan pasado a formar parte del ordenamiento interno, de conformidad con el artículo 96 de la Constitución Española.

TÍTULO II Régimen fiscal especial de las entidades sin fines lucrativos

CAPÍTULO I Normas generales

Artículo 2.Entidades sin fines lucrativos.

Se consideran entidades sin fines lucrativos a efectos de esta Ley, siempre que cumplan los requisitos establecidos en el artículo siguiente:

a) Las fundaciones.

b) Las asociaciones declaradas de utilidad pública.

c) Las organizaciones no gubernamentales de desarrollo a que se refiere la Ley 23/1998, de 7 de julio, de Cooperación Internacional para el Desarrollo, siempre que tengan alguna de las formas jurídicas a que se refieren los párrafos anteriores.

d) Las delegaciones de fundaciones extranjeras inscritas en el Registro de Fundaciones.

e) Las federaciones deportivas españolas, las federaciones deportivas territoriales de ámbito autonómico integradas en aquéllas, el Comité Olímpico Español y el Comité Paralímpico Español.

f) Las federaciones y asociaciones de las entidades sin fines lucrativos a que se refieren los párrafos anteriores.

Artículo 3.Requisitos de las entidades sin fines lucrativos.

Las entidades a que se refiere el artículo anterior, que cumplan los siguientes requisitos, serán consideradas, a efectos de esta Ley, como entidades sin fines lucrativos:

1º Que persigan fines de interés general, como pueden ser, entre otros, los de defensa de los derechos humanos, de las víctimas del terrorismo y actos violentos, los de asistencia social e inclusión social, cívicos, educativos, culturales, científicos, deportivos, sanitarios, laborales, de fortalecimiento institucional, de cooperación para el desarrollo, de promoción del voluntariado, de promoción de la acción social, de defensa del medio ambiente, de promoción y atención a las personas en riesgo de exclusión por razones físicas, económicas o culturales, de promoción de los valores constitucionales y defensa de los principios democráticos, de fomento de la tolerancia, de fomento de la economía social, de desarrollo de la sociedad de la información, o de investigación científica y desarrollo tecnológico.

2º Que destinen a la realización de dichos fines al menos el 70 por 100 de las siguientes rentas e ingresos:

a) Las rentas de las explotaciones económicas que desarrollen.

[398] http://www.igsap.map.es/cia/dispo/lbe.htm, 26 November 2004.

b) Las rentas derivadas de la transmisión de bienes o derechos de su titularidad. En el cálculo de estas rentas no se incluirán las obtenidas en la transmisión onerosa de bienes inmuebles en los que la entidad desarrolle la actividad propia de su objeto o finalidad específica, siempre que el importe de la citada transmisión se reinvierta en bienes y derechos en los que concurra dicha circunstancia.

c) Los ingresos que obtengan por cualquier otro concepto, deducidos los gastos realizados para la obtención de tales ingresos. Los gastos realizados para la obtención de tales ingresos podrán estar integrados, en su caso, por la parte proporcional de los gastos por servicios exteriores, de los gastos de personal, de otros gastos de gestión, de los gastos financieros y de los tributos, en cuanto que contribuyan a la obtención de los ingresos, excluyendo de este cálculo los gastos realizados para el cumplimiento de los fines estatutarios o del objeto de la entidad sin fines lucrativos. En el cálculo de los ingresos no se incluirán las aportaciones o donaciones recibidas en concepto de dotación patrimonial en el momento de su constitución o en un momento posterior.

Las entidades sin fines lucrativos deberán destinar el resto de las rentas e ingresos a incrementar la dotación patrimonial o las reservas.

El plazo para el cumplimiento de este requisito será el comprendido entre el inicio del ejercicio en que se hayan obtenido las respectivas rentas e ingresos y los cuatro años siguientes al cierre de dicho ejercicio.

3º Que la actividad realizada no consista en el desarrollo de explotaciones económicas ajenas a su objeto o finalidad estatutaria. Se entenderá cumplido este requisito si el importe neto de la cifra de negocios del ejercicio correspondiente al conjunto de las explotaciones económicas no exentas ajenas a su objeto o finalidad estatutaria no excede del 40 por 100 de los ingresos totales de la entidad, siempre que el desarrollo de estas explotaciones económicas no exentas no vulnere las normas reguladoras de defensa de la competencia en relación con empresas que realicen la misma actividad.

A efectos de esta Ley, se considera que las entidades sin fines lucrativos desarrollan una explotación económica cuando realicen la ordenación por cuenta propia de medios de producción y de recursos humanos, o de uno de ambos, con la finalidad de intervenir en la producción o distribución de bienes o servicios. El arrendamiento del patrimonio inmobiliario de la entidad no constituye, a estos efectos, explotación económica.

4º Que los fundadores, asociados, patronos, representantes estatutarios, miembros de los órganos de gobierno y los cónyuges o parientes hasta el cuarto grado inclusive de cualquiera de ellos no sean los destinatarios principales de las actividades que se realicen por las entidades, ni se beneficien de condiciones especiales para utilizar sus servicios.

Lo dispuesto en el párrafo anterior no se aplicará a las actividades de investigación científica y desarrollo tecnológico, ni a las actividades de asistencia social o deportivas a que se refiere el artículo 20, apartado uno, en sus números 8º y 13º, respectivamente, de la Ley 37/1992, de 28 de diciembre, del Impuesto sobre el Valor Añadido, ni a las fundaciones cuya finalidad sea la conservación y restauración de bienes del Patrimonio Histórico Español que cumplan las exigencias de la Ley 16/1985, de 25 de junio, del Patrimonio Histórico Español, o de la Ley de la respectiva Comunidad Autónoma que le sea de aplicación, en particular respecto de los deberes de visita y exposición pública de dichos bienes.

Lo dispuesto en el primer párrafo de este número no resultará de aplicación a las entidades a que se refiere el párrafo e) del artículo anterior.

5º Que los cargos de patrono, representante estatutario y miembro del órgano de gobierno sean gratuitos, sin perjuicio del derecho a ser reembolsados de los gastos debidamente justificados que el desempeño de su función les ocasione, sin que las cantidades percibidas por este concepto puedan exceder de los límites previstos en la normativa del Impuesto sobre la Renta de las Personas Físicas para ser consideradas dietas exceptuadas de gravamen.

Lo dispuesto en el párrafo anterior no resultará de aplicación a las entidades a que se refiere el párrafo e) del artículo anterior y respetará el régimen específico establecido para aquellas asociaciones que, de acuerdo con la Ley Orgánica 1/2002, de 22 de marzo, Reguladora del Derecho de Asociación, hayan sido declaradas de utilidad pública.

Los patronos, representantes estatutarios y miembros del órgano de gobierno podrán percibir de la entidad retribuciones por la prestación de servicios, incluidos los prestados en el marco de una relación de carácter laboral, distintos de los que implica el desempeño de las funciones que les corresponden como miembros del Patronato u órgano de representación, siempre que se cumplan las condiciones previstas en las normas por las que se rigen la entidad. Tales personas no podrán participar en los resultados económicos de la entidad, ni por sí mismas, ni a través de persona o entidad interpuesta.

Lo dispuesto en este número será de aplicación igualmente a los administradores que representen a la entidad en las sociedades mercantiles en que participe, salvo que las retribuciones percibidas por la condición de administrador se reintegren a la entidad que representen.

En este caso, la retribución percibida por el administrador estará exenta del Impuesto sobre la Renta de las Personas Físicas, y no existirá obligación de practicar retención a cuenta de este impuesto.

6º Que, en caso de disolución, su patrimonio se destine en su totalidad a alguna de las entidades consideradas como entidades beneficiarias del mecenazgo a los efectos previstos en los artículos 16 a 25, ambos inclusive, de esta Ley, o a entidades públicas de naturaleza no fundacional que persigan fines de interés general, y esta circunstancia esté expresamente contemplada en el negocio fundacional o en los estatutos de la entidad disuelta, siendo aplicable a dichas entidades sin fines lucrativos lo dispuesto en el párrafo c) del apartado 1 del artículo 97 de la Ley 43/1995, de 27 de diciembre, del Impuesto sobre Sociedades.

En ningún caso tendrán la condición de entidades sin fines lucrativos, a efectos de esta Ley, aquellas entidades cuyo régimen jurídico permita, en los supuestos de extinción, la reversión de su patrimonio al aportante del mismo o a sus herederos o legatarios, salvo que la reversión esté prevista en favor de alguna entidad beneficiaria del mecenazgo a los efectos previstos en los artículos 16 a 25, ambos inclusive, de esta Ley.

7º Que estén inscritas en el registro correspondiente.

8º Que cumplan las obligaciones contables previstas en las normas por las que se rigen o, en su defecto, en el Código de Comercio y disposiciones complementarias.

9º Que cumplan las obligaciones de rendición de cuentas que establezca su legislación específica. En ausencia de previsión legal específica, deberán rendir cuentas antes de transcurridos seis meses desde el cierre de su ejercicio ante el organismo público encargado del registro correspondiente.

10º Que elaboren anualmente una memoria económica en la que se especifiquen los ingresos y gastos del ejercicio, de manera que puedan identificarse por categorías y por proyectos, así como el porcentaje de participación que mantengan en entidades mercantiles.

Las entidades que estén obligadas en virtud de la normativa contable que les sea de aplicación a la elaboración anual de una memoria deberán incluir en dicha memoria la información a que se refiere este número.

Reglamentariamente, se establecerán el contenido de esta memoria económica, su plazo de presentación y el órgano ante el que debe presentarse.

Artículo 4.Domicilio fiscal.

El domicilio fiscal de las entidades sin fines lucrativos será el del lugar de su domicilio estatutario, siempre que en él esté efectivamente centralizada la gestión administrativa y dirección de la entidad. En otro caso, dicho domicilio será el lugar en que se realice dicha gestión y dirección.

Si no pudiera establecerse el lugar del domicilio fiscal de acuerdo con los criterios anteriores, se considerará como tal el lugar donde radique el mayor valor del inmovilizado.

16.4. Law on NGO

There is no specific law for NGO in Spain but a law for the international co-operation for development of 7 July 1998 "Ley 23/1998, de 7 de Julio, de cooperarción internacional para el desarrollo"[399].

Artículo 32. Las organizaciones no gubernamentales de desarrollo.

A los efectos de la presente Ley se consideran organizaciones no gubernamentales de desarrollo aquellas entidades de Derecho privado, legalmente constituidas y sin fines de lucro, que tengan entre sus fineso como objeto expreso, según sus propios Estatutos, la realización de actividades relacionadas con los principios y objetivos de la cooperación internacional para el desarrollo. Las organizaciones no gubernamentales de desarrollo habrán de gozar de plena capacidad jurídica y de obrar, y deberán disponer de una estructura susceptible de garantizar suficientemente el cumplimiento de sus objetivos.

Artículo 33. Registro de las organizaciones no gubernamentales de desarrollo.

1. Las organizaciones no gubernamentales de desarrollo que cumplan con los requisitos

[399] http://www.aeci.es/4-Legislacion/ftp/Bases/LeyCooperacion.pdf, 25 November 2004.

establecidos en el artículo anterior podrán inscribirse en un Registro abierto en la Agencia Española de Cooperación Internacional, que será regulado por vía reglamentaria o en los registros que con idéntica finalidad puedan crearse en las Comunidades Autónomas. Se articularán los correspondientes procedimientos de colaboración entre la Agencia Española de Cooperación Internacional y las Comunidades Autónomas a fin de asegurar la comunicación y homologación de los datos registrales.

2. La inscripción en alguno de dichos Registros constituye una condición indispensable para recibir de las Administraciones públicas, en el ámbito de sus respectivas competencias, ayudas o subvenciones computables como ayuda oficial al desarrollo. Dicha inscripción será también necesaria para que las organizaciones no gubernamentales de desarrollo puedan acceder a los incentivos fiscales a que se refiere el artículo 35.

3. El Registro de Organizaciones no Gubernamentales de Desarrollo tiene carácter público, en los términos regulados por el artículo 37 de la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.

Artículo 34. Ayudas y subvenciones.

Las Administraciones públicas, dentro del ámbito de sus respectivas competencias, podrán conceder ayudas y subvenciones públicas y establecer convenios estables y otras formas de colaboración, con los agents sociales descritos en en artículo 31 para la ejecución de programas y proyectos de cooperación para el desarrollo, estableciendo las condiciones y régimen jurídico aplicables que garantizarán, en todo caso, el carácter no lucrativo de los mismos.

Artículo 35. Régimen fiscal de las organizaciones no gubernamentales de desarrollo y de las aportaciones efectuadas a las mismas.

1. El régimen tributario de las entidades sin fines lucrativos regulado en el capítulo I del Título II de la Ley 30/1994, de 24 de noviembre, resultará aplicable a las organizaciones no gubernamentales de desarrollo inscritas en los Registros a que se refiere el artículo 33 de la presente Ley, siempre que revistan la forma jurídica y cumplan con los requisitos exigidos en el mismo.

2. La exención subjetiva prevista en el artículo 45.1.A.C) del Real Decreto legislativ 1/1993, de 24 de septiembre, por el que se aprueba el texto refundido del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados, resultará de aplicación a las entidades contempladas en el mismo que realicen las actividades a que dicho precepto se refiere en el marco de la cooperación al desarrollo.

3. Las actividades de cooperación para el desarrollo enumeradas en el artículo 9 de la presente Ley tienen la consideración de actividades de asistencia social a efectos del disfrute de la exención prevista en el artículo 20, apartado 1, número 8. 1 de la Ley 37/1992, de 28 de diciembre, del Impuesto sobre el Valor Añadido.

4. Las aportaciones efectuadas por personas físicas y jurídicas a organizaciones no gubernamentales de desarrollo incluidas en el ámbito de la aplicación de la Ley 30/1994, de 24 de noviembre, darán derecho al disfrute de los incentivos contemplados en el capítulo II del Título II de dicha Ley.

5. El régimen tributario aplicable a las organizaciones no gubernamentales de desarrollo, cuando no cumplan los requisitos exigidos en el capítulo I del Título II de la Ley 30/1994, de 24 de noviembre, será el establecido en el capítulo XV de la Ley 43/1995, de 27 de diciembre, reguladora del Impuesto sobre Sociedades.

6. La presente regulación de incentivos fiscales se entiende sin perjuicio de la que puedan establecer otras Administraciones públicas en virtud de la normativa vigente y sus competencias en la materia.

Artículo 36. Incremento a incentivos fiscales en las Leyes de Presupuestos.

Las Leyes de Presupuestos del Estado de cada año podrán incluir entre las actividades y programas prioritarios de mecenazgo a que se refiere el artículo 67 de la Ley 30/1994, de 24 de noviembre, determinadas actividades o programas realizados en el marco de la cooperación para el desarrollo, a efectos de la aplicación de los incentivos fiscales incrementados que dicho precepto contempla.

16.5. Law on other legal forms

There are no relevant laws on other legal forms in Spain.

16.6. Other laws

16.6.1. Decree Law on the Registry

Decree Law on the registry of 11 June 1999 "Real Decreto 993/1999, de 11 de junio"[400].

Artículo 4. Contenido de las inscripciones.

En el Registro de Organizaciones no Gubernamentales de Desarrollo se inscribirán los siguientes datos:

a) Los relativos a la constitución de una Organización no Gubernamental de Desarrollo.

b) Objeto y fines de la Organización no Gubernamental de Desarrollo que se desea inscribir.

c) Órganos de gobierno y representación de la misma e identidad de las personas que forman parte de los mismos.

d) Sede social y diferentes sedes o delegaciones de las que dispone.

e) Organismos públicos de los que se ha recibido ayudas y subvenciones, objeto de las mismas y cantidades recibidas durante los cinco años anteriores a la inscripción.

f) Extinción o disolución de la Organización no Gubernamental de Desarrollo y liquidación y destino de sus bienes.

g) Sanciones administrativas firmes recaídas en aplicación de la normativa reguladora de subvenciones públicas.

h) Modificación de cualquiera de los datos que consten previamente inscritos.

i) Cualquier otro dato, cuando así lo determine la legislación en vigor.

16.6.2. Rules concerning the register entry

Rules concerning the register entry[401]:

Los documentos a presentar para la inscripción de la constitución de una asociación de ámbito nacional son:

Acta Fundacional: que ha de contener, el nombre, apellidos de los promotores de la asociación si son personas físicas, la denominación o razón social si son personas jurídicas, y, en ambos casos, la nacionalidad el domicilio y el número de identificación fiscal (como mínimo han de ser tres personas físicas o jurídicas); la voluntad de los promotores de constituir una asociación, los pactos que, en su caso, hubiesen establecido y la denominación de ésta, que será coincidente con la que figure en los Estatutos; los Estatutos; lugar, fecha de otorgamiento del acta y firmas de los promotores o sus representantes, en el caso de personas jurídicas; identificación de las personas que integran los órganos provisionales de gobierno que representan a la asociación. (El Acta se presentará por duplicado ejemplar y con firmas originales de todos los socios fundadores en los dos ejemplares).

El acta fundacional deberá ir acompañada de la siguiente documentación:

Para las personas físicas promotoras, documento acreditativo de su identidad, y si actúa a través de representante la acreditación de la identidad de éste (copia del DNI, permiso de residencia, etc., según el caso).

Para las personas jurídicas, documentación acreditativa de su naturaleza jurídica, certificación del acuerdo adoptado por el órgano competente en el que figure la voluntad de constituir la asociación, formar parte de ella y nombramiento de la persona física que la representará.

Los promotores menores no emancipados mayores de catorce años, sin perjuicio de lo que establezca el régimen previsto para las asociaciones infantiles, juveniles o de alumnos, deben aportar documento acreditativo del consentimiento de la persona que deba suplir su capacidad.

Si algún promotor es extranjero deberá aportar la documentación acreditativa de que cuenta con la autorización de estancia o residencia en España.

Estatutos: forman parte del Acta Fundacional y deberán contener todos los extremos del artículo 7 de la Ley Orgánica 1/2002, de 22 de marzo, reguladora del derecho de asociación, y venir firmados por todos los socios promotores o sus representantes legales si son personas jurídicas. (Los Estatutos se presentarán por duplicado ejemplar y con firmas originales en los dos ejemplares).

Tasas: debe acompañarse la hoja blanca del impreso de autoliquidación, validado por cualquier entidad bancaria, justificativo de haber abonado al Tesoro Público la tasa legalmente establecida.

Solicitud, formulada por el representante de la entidad en la que figuren los datos de

[400] http://www.boe.es/boe/dias/1999-06-26/pdfs/A24396-24398.pdf, 25 November 2004.

[401] http://www.mir.es/pciudada/asociaci/asociaci.htm#inscri, 29 November 2004.

identificación del solicitante (nombre, cargo que ostenta en la asociación o condición en la que actúa, número de identificación fiscal, domicilio, número de teléfono y firma), identificación de la asociación (denominación, domicilio, nombre de dominio o dirección de internet, número de identificación fiscal, si se hubiese obtenido), descripción de la documentación que se acompaña y petición que se formula.

La solicitud, junto con el resto de la documentación, deberá dirigirse a la Secretaría General Técnica del Ministerio del Interior. Registro Nacional de Asociaciones. C/ Amador de los Ríos, 7 - 28010 Madrid. El Registro General de entrada de documentos del Ministerio se encuentra en la dirección indicada.

16.6.3. Law on the recognition for public utility

Law on the recognition for public utility of 19 December 2003 "Real Decreto 1740/2003, de 19 de dicembre, sobre procedimientos relativos a asociaciones de utilidad publica"[402].

Artículo 5. Rendición anual de cuentas de las entidades declaradas de utilidad pública.

1. Las entidades declaradas de utilidad pública presentarán ante el organismo encargado de verificar su constitución y de efectuar su inscripción en el registro de asociaciones correspondiente las cuentas anuales del ejercicio anterior y una memoria descriptiva de las actividades realizadas durante aquél. Dicha documentación se deberá presentar en el plazo de los seis meses siguientes a la finalización del ejercicio económico correspondiente. A dicha documentación se acompañará una certificación del acuerdo de la asamblea general de socios que contenga la aprobación de las cuentas anuales y el nombramiento, en su caso, de auditores, expedida por las personas o cargos de la entidad con facultades para certificar acuerdos.

2. Las cuentas anuales de las entidades declaradas de utilidad pública, comprensivas del balance de situación, la cuenta de resultados y la memoria económica, se formularán conforme a lo que determinen las normas de adaptación del Plan General de Contabilidad a las entidades sin fines lucrativos, contenidas en el anexo I del Real Decreto 776/1998, de 30 de abril, sin perjuicio de las particularidades que puedan establecer las disposiciones fiscales para este tipo de entidades.

3. Las cuentas anuales y la memoria de actividades se presentarán firmadas por todos los miembros de la junta directiva u órgano de representación de la asociación obligados a formularlas.

4. Las entidades declaradas de utilidad pública obligadas a formular cuentas anuales en modelo normal deberán someter a auditoría sus cuentas anuales y acompañarán a ellas un ejemplar del informe de los auditores, firmado por éstos. El informe de auditoría deberá ponerse a disposición de los asociados antes de la celebración de la asamblea general en la que se sometan a aprobación las cuentas anuales auditadas. Dicho informe se acompañará de un certificado acreditativo de que corresponde a las cuentas anuales presentadas, cuando no constase en la certificación a que se refiere el apartado 1.

5. Asimismo, las entidades declaradas de utilidad pública deberán facilitar a las Administraciones públicas los informes, datos o documentos complementarios que sean pertinentes sobre las cuentas y las actividades realizadas en cumplimiento de sus fines, de acuerdo con lo previsto en el artículo 34.2 de la Ley Orgánica 1/2002, de 22 de marzo.

Artículo 6. Procedimiento de rendición de cuentas de las entidades declaradas de utilidad pública.

1. Será competente para verificar el cumplimiento de la obligación de rendición de cuentas el organismo público encargado del registro de asociaciones donde se encuentre inscrita la entidad declarada de utilidad pública. Dicho organismo examinará la documentación presentada y comprobará su adecuación a la normativa vigente.

2. Recibida toda la documentación relativa a la rendición de cuentas, y comprobada su adecuación a la normativa vigente, el organismo público encargado del registro de asociaciones acordará su depósito, a efectos de constancia y publicidad, lo notificará a la entidad interesada y lo comunicará a la Secretaría General Técnica del Ministerio del Interior y al Ministerio de Hacienda.

3. Si la documentación integrante de la rendición de cuentas no se adecua a la normativa vigente, el organismo competente a que se refiere el apartado 1 instará a la entidad para que subsane la falta o acompañe los documentos preceptivos, otorgándole al efecto un plazo de 10 días, con indicación de que, si así no lo hiciera, se comunicará este hecho a la Secretaría General Técnica del Ministerio del Interior o, en su caso, al órgano competente de la comunidad autónoma, a fin de que se incoe el procedimiento de revocación de la declaración de utilidad pública de acuerdo con el artículo 7, a cuyos efectos acompañará la

[402] http://www.mir.es/derecho/rd/rd174003.htm, 29 November 2004.

documentación con un informe comprensivo de las deficiencias advertidas.

4. Si las entidades declaradas de utilidad pública no hubiesen cumplido la obligación de rendición de cuentas prevista en el artículo 5, el organismo público encargado del registro de asociaciones donde se encuentre inscrita la entidad declarada de utilidad pública comunicará a la Secretaría General Técnica del Ministerio del Interior o, en su caso, el órgano competente de la comunidad autónoma, en los seis meses siguientes a la fecha límite de rendición de cuentas, mediante relación certificada, las entidades declaradas de utilidad pública que no rindieron cuentas.

En este supuesto, el organismo público encargado del registro de asociaciones donde se encuentre inscrita la entidad declarada de utilidad pública remitirá además la documentación acompañada de un informe comprensivo de las circunstancias advertidas, a fin de que se incoe y tramite el procedimiento de revocación de la declaración de utilidad pública de acuerdo con el artículo 7.

5. Cuando el incumplimiento de la obligación de rendir cuentas afecte a entidades inscritas en el Registro Nacional de Asociaciones, la Secretaría General Técnica del Ministerio del Interior procederá de oficio a la iniciación del procedimiento regulado en el artículo 7.

6. Los registros de asociaciones conservarán las cuentas anuales y los documentos complementarios depositados, durante seis años a contar desde la recepción de la rendición de cuentas.

Artículo 7. Procedimiento de revocación de la declaración de utilidad pública.

1. La Secretaría General Técnica del Ministerio del Interior o, en su caso, la comunidad autónoma competente incoarán el correspondiente procedimiento de revocación de la declaración de utilidad pública si tuviera conocimiento, como consecuencia del procedimiento regulado en el artículo anterior o por cualquier otra fuente de información, de las siguientes circunstancias:

a) Que las entidades declaradas de utilidad pública hayan dejado de reunir cualesquiera de los requisitos necesarios para obtener y mantener vigente la declaración de utilidad pública.

b) Que dichas entidades no hayan rendido cuentas o no lo hayan hecho conforme a la normativa en vigor.

c) Que las entidades declaradas de utilidad pública no hayan facilitado a la Administración los informes que establece el artículo 34.2 de la Ley Orgánica 1/2002, de 22 de marzo, reguladora del Derecho de Asociación.

Los organismos encargados de los registros de asociaciones deberán comunicar a la Secretaría General Técnica del Ministerio del Interior, en el plazo máximo de seis meses desde su conocimiento o, en el caso del párrafo b) anterior, desde la fecha límite de rendición de cuentas, la concurrencia de alguna de dichas circunstancias, indicando, en su caso, si se ha incoado el procedimiento de revocación.

2. La iniciación del procedimiento se notificará a las entidades que hubieran obtenido la declaración, comunicándoles las razones o motivos que pudieran determinar la revocación de aquélla, y se les concederá un plazo de 15 días para que puedan aportar cuantas alegaciones, documentos o informaciones estimen pertinentes o proponer la práctica de las pruebas que consideren necesarias; el expediente se someterá seguidamente a informe de los ministerios o de las Administraciones públicas competentes en relación con los fines estatutarios y actividades de las entidades de que se trate.

3. En el caso de entidades inscritas en los registros de asociaciones de las comunidades autónomas:

a) Si el procedimiento lo hubiera incoado el Ministerio del Interior, la Secretaría General Técnica de dicho ministerio remitirá copia del expediente así instruido a los órganos responsables de dichos registros, interesándoles la emisión de informe sobre el contenido de aquél y sobre la procedencia de la revocación.

b) Si el procedimiento lo hubieran incoado los organismos responsables de los registros de las comunidades autónomas, remitirán, una vez instruido, copia del expediente con un informe a la Secretaría General Técnica del Ministerio del Interior.

Los informes, que deberán ser evacuados en el plazo de 15 días, no serán vinculantes. De no emitirse el informe en el plazo señalado, se podrán proseguir las actuaciones.

4. Recibidas las alegaciones e informes y practicadas las pruebas admitidas y recibido, en su caso, el informe de las comunidades autónomas, o transcurridos los plazos respectivamente prevenidos para su aportación, práctica o emisión, la Secretaría General Técnica del Ministerio del Interior formulará y someterá al titular del departamento propuesta de resolución.

5. La Secretaría General Técnica del Ministerio del Interior, inmediatamente antes de someter la

propuesta de resolución al titular del departamento, pondrá de manifiesto el expediente a la entidad afectada, y le concederá un plazo de 15 días para que pueda formular alegaciones y presentar los documentos o informaciones que estime pertinentes.

6. La resolución de revocación adoptará la forma de orden del Ministro del Interior, será notificada a la entidad solicitante y comunicada al Ministerio de Hacienda, al organismo público encargado del registro de asociaciones donde se encuentre inscrita la entidad y a las Administraciones públicas que hayan informado el expediente.

Dicha orden ministerial pondrá fin a la vía administrativa y contra ella podrá interponerse recurso contencioso-administrativo y, en su caso, recurso potestativo de reposición.

7. La revocación de la declaración de utilidad pública se publicará en el "Boletín Oficial del Estado".

Una vez publicada, el organismo público encargado del registro de asociaciones donde se encuentre inscrita la entidad procederá a inscribir el correspondiente asiento de revocación de la declaración de utilidad pública. Cuando se trate de registros autonómicos de asociaciones, registros de asociaciones de Ceuta y Melilla o registros de asociaciones reguladas por leyes especiales, los organismos encargados de dichos registros comunicarán al Registro Nacional de Asociaciones la inscripción del citado asiento de revocación.

8. Si la resolución establece la no revocación de la declaración de utilidad pública, se notificará al interesado y se comunicará al organismo encargado del registro de asociaciones donde se encuentre inscrita la entidad, a los efectos que se deriven de la vigencia de la declaración de utilidad pública.

9. Transcurrido el plazo de seis meses desde el acuerdo de iniciación del procedimiento, sin que haya sido notificada resolución expresa al interesado, se entenderá caducado el procedimiento.

10. En los supuestos de declaraciones de utilidad pública múltiples con arreglo al artículo 4.3, en que se haya dado de baja una entidad de una asociación de personas jurídicas, o una asociación integrada en una federación, así como en el supuesto de extinción de éstas, siempre que la persona jurídica simple o la compuesta esté declarada de utilidad pública, la Secretaría General Técnica del Ministerio del Interior incoará el correspondiente procedimiento, por los trámites de este artículo, para acordar el mantenimiento o la revocación, total o parcial, de la declaración.

17. Sweden

17.1. Law on Associations

17.1.1. Associations

There is no common legal definition in Swedish law for associations.

17.1.2. Associations for general benefit

Associations for general benefit are governed by the Income Tax Act "Incomstskattelag (1999:1229)"[403].

7 kap. Vissa stiftelser, ideella föreningar, registrerade

trossamfund och andra juridiska personer

Innehåll

1 § I detta kapitel finns bestämmelser om undantag frånskattskyldighet för

- staten, kommuner och pensionsstiftelser i 2 §,

- stiftelser i 3-6 §§,

- ideella föreningar i 7-13 §§,

- registrerade trossamfund i 14 §,

- vissa andra juridiska personer i 15-20 §§, och

- ägare av vissa fastigheter i 21 §

I fråga om begränsat skattskyldiga gäller bestämmelserna de inkomster som de är skattskyldiga för enligt 3 eller 6 kap. Helt undantagna juridiska personer

2 § /Upphör att gälla U:2005-01-01/

Helt undantagna från skattskyldighet är

1. staten,

2. landsting, kommuner och kommunalförbund,

3. pensionsstiftelser enligt lagen (1967:531) om tryggande av pensionsutfästelse m.m., och

[403] http://62.95.69.15/cgi-bin/thw?${APPL}=SFST&${BASE}=SFST&${THWIDS}=1.39/27839&${HTML}=sfst_dok&${TRIPSHOW}=format=THW&${THWURLSAVE}=39/27839, 3 December 2004.

4. samordningsförbund enligt 4 § lagen (2003:1210) om finansiell samordning av rehabiliteringsinsatser mellan allmän försäkringskassa, länsarbetsnämnd, kommun och landsting.

I lagen (1990:661) om avkastningsskatt på pensionsmedel finns bestämmelser om avkastningsskatt för pensionsstiftelser. Lag (2003:1214).

2 § /Träder i kraft I:2005-01-01/

Helt undantagna från skattskyldighet är

1. staten,

2. landsting, kommuner och kommunalförbund,

3. pensionsstiftelser enligt lagen (1967:531) om tryggande av pensionsutfästelse m.m., och

4. samordningsförbund enligt 4 § lagen (2003:1210) om finansiell samordning av rehabiliteringsinsatser.

I lagen (1990:661) om avkastningsskatt på pensionsmedel finns bestämmelser om avkastningsskatt för pensionsstiftelser. Lag (2004:790).

Stiftelser

Skattskyldighet

3 § En stiftelse är skattskyldig bara för inkomst av sådan näringsverksamhet som avses i 13 kap. 1 §, om stiftelsen uppfyller

- ändamålskravet i 4 §,

- verksamhetskravet i 5 §, och

- fullföljdskravet i 6 §.

En stiftelse som uppfyller kraven i första stycket är dock inte skattskyldig för kapitalvinster och kapitalförluster.

Särskilda bestämmelser om pensionsstiftelser finns i 2 § och om vissa andra stiftelser i 15-18 §§.

Ändamålskravet

4 § Stiftelsen skall ha till huvudsakligt ändamål att

1. främja vård och uppfostran av barn,

2. lämna bidrag för undervisning eller utbildning,

3. bedriva hjälpverksamhet bland behövande,

4. främja vetenskaplig forskning,

5. främja nordiskt samarbete, eller

6. stärka Sveriges försvar under samverkan med militär eller annan myndighet.

Ändamålen får inte vara begränsade till vissa familjer eller bestämda personer.

Verksamhetskravet

5 § Stiftelsen skall i den verksamhet som bedrivs uteslutande eller så gott som uteslutande tillgodose sådant ändamål som anges i 4 §.

Fullföljdskravet

6 § Stiftelsen skall, sett över en period av flera år, bedriva en verksamhet som skäligen motsvarar avkastningen av stiftelsens tillgångar.

Ideella föreningar

Skattskyldighet

7 § En ideell förening är skattskyldig bara för inkomst av sådan näringsverksamhet som avses i 13 kap. 1 §, om föreningen uppfyller

- ändamålskravet i 8 §,

- verksamhetskravet i 9 §,

- fullföljdskravet i 10-12 §§, och

- öppenhetskravet i 13 §.

En förening som uppfyller kraven i första stycket är dock inte skattskyldig för

1. kapitalvinster och kapitalförluster,

2. sådan inkomst som kommer från en självständig näringsverksamhet eller en särskild förvaltningsenhet som avser fastighet, om inkomsten till huvudsaklig del kommer från

- verksamhet som är ett direkt led i främjandet av sådana ändamål som avses i 8 § eller som har annan naturlig anknytning till sådana ändamål, eller

- verksamhet som av hävd utnyttjats som finansieringskälla för ideellt arbete, eller

3. inkomst från innehav av en fastighet som tillhör föreningen och som används i föreningens verksamhet på sådant sätt som anges i 3 kap. 4 § fastighetstaxeringslagen (1979:1152).

Särskilda bestämmelser om vissa ideella föreningar finns i 15-17 §§.

Ändamålskravet

8 § Föreningen skall ha till huvudsakligt syfte att främja sådana ändamål som anges i 4 § eller andra allmännyttiga ändamål, såsom religiösa, välgörande, sociala, politiska, idrottsliga, konstnärliga eller liknande kulturella ändamål.

Ändamålen får inte vara begränsade till vissa familjers, föreningens medlemmars eller andra bestämda personers ekonomiska intressen.

Verksamhetskravet

9 § Föreningen skall i den verksamhet som bedrivs uteslutande eller så gott som uteslutande tillgodose sådana ändamål som anges i 8 §.

Fullföljdskravet

10 § Föreningen skall, sett över en period av flera år, bedriva en verksamhet som skäligen motsvarar avkastningen av föreningens tillgångar.

11 § Skatteverket får medge undantag från fullföljdskravet I 10 § för en förening som avser att förvärva en fastighet eller annan anläggning som är avsedd för den ideella verksamheten.

Detsamma gäller om en förening avser att genomföra omfattande byggnads-, reparations- eller anläggningsarbeten på en fastighet som används av föreningen.

Beslutet får avse högst fem beskattningsår i följd. Det får förenas med villkor att föreningen skall ställa säkerhet eller liknande för den inkomstskatt eller förmögenhetsskatt som föreningen kan bli skyldig att betala på grund av omprövning av

taxeringarna för de år som beslutet avser, om det upphör att gälla enligt 12 §.

Skatteverkets beslut får överklagas hos allmän förvaltningsdomstol. Prövningstillstånd krävs vid överklagande till kammarrätten. Lag (2003:669).

12 § Om föreningen inte inom föreskriven tid har genomfört den avsedda investeringen eller inte har iakttagit något annat villkor i beslutet, är föreningen skattskyldig som om undantaget inte hade medgetts.

Öppenhetskravet

13 § Föreningen får inte vägra någon inträde som medlem, om det inte finns särskilda skäl för det med hänsyn till arten eller omfattningen av föreningens verksamhet eller föreningens syfte eller annat.

Registrerade trossamfund

14 § Bestämmelserna om ideella föreningar i 7-13 §§ tillämpas också i fråga om registrerade trossamfund. Vissa andra juridiska personer.

17.2. Law on Foundations

The Foundations in Sweden are governed by the Foundations Act of 25 August 1994 "Stiftelselag (1994:1220)"[404].

Stiftelselag

Utfärdad: 1994-08-25

Ändring införd: t.o.m. SFS 2004:1185

[404] http://62.95.69.15/cgi-bin/thw?
%24%7BHTML%7D=sfst_lst
&%24%7BOOHTML%7D=sfst_dok
&%24%7BSNHTML%7D=sfst_err
&%24%7BMAXPAGE%7D=26
&%24%7BTRIPSHOW%7D=format%3DTHW
&%24%7BBASE%7D=SFST&%24%7BANDOR%7D=NOT
&%24%7BFREETEXT%7D=stiftelselag&tidb=
&UPPH=%3C2004-12-2, 25 February 2005.

1 kap. Inledande bestämmelser

1 § En stiftelse bildas genom

1. förordnande enligt 2 §,

2. förordnande enligt 11 kap. 1 §,

3. förordnande i kollektivavtal enligt 11 kap. 3 §, eller

4. åtgärd för grundande av pensionsstiftelse eller personalstiftelse enligt lagen (1967:531) om tryggande av pensionsutfästelse m.m.

För sådana stiftelser som avses i första stycket 2 och 3 gäller bestämmelserna i denna lag endast i den utsträckning som anges i 11 kap. För stiftelser som avses i första stycket 4 gäller endast lagen om tryggande av pensionsutfästelse m.m.

2 § En stiftelse bildas genom att egendom enligt förordnande av en eller flera stiftare avskiljs för att varaktigt förvaltas som en självständig förmögenhet för ett bestämt ändamål.

Stiftelsens egendom skall anses vara avskild när den har tagits om hand av någon som har åtagit sig att förvalta den i enlighet med stiftelseförordnandet.

3 § Ett stiftelseförordnande skall vara skriftligt och undertecknat av stiftaren eller stiftarna.

Ett giltigt testamentariskt förordnande skall godtas som ett stiftelseförordnande enligt denna lag utan hinder av bestämmelsen i första stycket.

4 § En stiftelse kan förvärva rättigheter och ikläda sig skyldigheter samt föra talan inför domstolar och andra myndigheter.

För en stiftelses förpliktelser svarar endast stiftelsens tillgångar.

5 § En stiftelse är moderstiftelse och en annan juridisk person är dotterföretag, om stiftelsen

1. innehar mer än hälften av rösterna för samtliga andelar i den juridiska personen,

2. äger andelar i den juridiska personen och på grund av avtal med andra delägare i denna förfogar över mer än hälften av rösterna för samtliga andelar,

3. äger andelar i den juridiska personen och har rätt att utse eller avsätta mer än hälften av ledamöterna i dess styrelse eller motsvarande ledningsorgan, eller

4. äger andelar i den juridiska personen och har rätt att ensamt utöva ett bestämmande inflytande över denna på grund av avtal med den juridiska personen eller på grund av föreskrift i dess bolagsordning, bolagsavtal eller därmed jämförbara stadgar.

Vidare är en juridisk person dotterföretag till moderstiftelsen, om ett annat dotterföretag till moderstiftelsen eller moderstiftelsen tillsammans med ett eller flera andra dotterföretag eller flera andra dotterföretag tillsammans

1. innehar mer än hälften av rösterna för samtliga andelar i den juridiska personen,

2. äger andelar i den juridiska personen och på grund av avtal med andra delägare i denna förfogar över mer än hälften av rösterna för samtliga andelar, eller

3. äger andelar i den juridiska personen och har rätt att utse eller avsätta mer än hälften av ledamöterna i dess styrelse eller motsvarande ledningsorgan.

Om ett dotterföretag äger andelar i en juridisk person och på grund av avtal med den juridiska personen eller på grund av föreskrift i dess bolagsordning, bolagsavtal eller därmed jämförbara stadgar har rätt att ensamt utöva ett bestämmande inflytande över den juridiska personen, är även denna dotterföretag till moderstiftelsen.

Moderstiftelse och dotterföretag utgör tillsammans en koncern.

Med koncernföretag avses i denna lag företag i samma koncern. Lag (1999:1106).

5 a § I de fall som avses i 5 § första stycket 1-3 och andra stycket skall sådana rättigheter som tillkommer någon som handlar i eget namn men för en annan fysisk eller juridisk

persons räkning anses tillkomma den personen.

Vid bestämmandet av antalet röster i ett dotterföretag beaktas inte de andelar i dotterföretaget som innehas av det företaget självt eller av dess dotterföretag. Detsamma gäller andelar som innehas av den som handlar i eget namn men för dotterföretagets

eller dess dotterföretags räkning. Lag (1999:1106).

5 b § Vid tillämpningen av 5 och 5 a §§ avses med andelar aktier och andra andelar i juridiska personer. Lag (1999:1106).

6 § En stiftelse skall ha ett namn. Namnet skall innehålla ordet stiftelse.

Ingen annan än en stiftelse får i sitt namn använda ordet stiftelse eller en förkortning av detta ord.

Bestämmelser om stiftelses firma finns i 8 kap.

7 § Bestämmelserna i 5-5 b §§, 6 § första stycket och 2-10 kap. gäller inte i fråga om stiftelser vilkas tillgångar enligt stiftelseförordnandet får användas endast till förmån för

bestämda fysiska personer. Lag (1999:1106).

8 § I 9 kap. finns bestämmelser om att stiftelser står under tillsyn av en tillsynsmyndighet. I 10 kap. finns bestämmelser om att vissa stiftelser skall vara registrerade i ett stiftelseregister.

2 kap. Förvaltning

Allmänt om förvaltningen

1 § Föreskrifterna i stiftelseförordnandet skall följas vid förvaltningen av stiftelsens angelägenheter, om inte föreskrifterna strider mot någon bestämmelse i denna lag.

2 § Om ett åtagande att förvalta stiftelsens egendom i enlighet med stiftelseförordnandet görs av en eller flera fysiska personer, föreligger egen förvaltning. Görs ett sådant åtagande av en juridisk person, föreligger anknuten förvaltning.

Den eller de fysiska personer som har åtagit sig att förvalta stiftelsens egendom i enlighet med stiftelseförordnandet bildar styrelse för stiftelsen. Vid ett sådant omhändertagande av egendom som avses i 1 kap. 2 § andra stycket får stiftelsen företrädas av någon som skall ingå i styrelsen.

Den juridiska person som har åtagit sig att förvalta stiftelsens egendom är förvaltare för stiftelsen. Om staten har gjort ett sådant åtagande, är det i stället den myndighet som har gjort åtagandet för statens räkning som är förvaltare.

3 § Styrelsen eller förvaltaren svarar för att föreskrifterna i stiftelseförordnandet följs.

Första stycket medför inte ansvar för styrelsen eller förvaltaren för åtgärder som i enlighet med stiftelseförordnandet vidtagits av någon annan än styrelsen i fråga om att utse eller entlediga ledamöter eller ordförande i styrelsen eller av någon annan än

styrelsen eller förvaltaren i fråga om att utse eller entlediga revisor i stiftelsen eller att bestämma arvode åt styrelsen, förvaltaren eller revisorerna.

Inte heller medför första stycket ansvar för styrelsen eller förvaltaren för innehållet i en revisors uppdrag till den del det finns föreskrifter om detta i stiftelseförordnandet.

4 § I den mån det inte följer av stiftelseförordnandet hur stiftelsens förmögenhet skall vara placerad, svarar styrelsen eller förvaltaren för att förmögenheten är placerad på ett godtagbart sätt.

5 § En stiftelse får placera sin förmögenhet gemensamt med andra stiftelser, om inte annat följer av stiftelseförordnandet.

6 § En stiftelse får inte lämna penninglån till eller ställa säkerhet till förmån för

1. stiftaren eller förvaltaren,

2. den som ensam eller tillsammans med andra företräder stiftelsen enligt 16 eller 23 § eller företräder förvaltaren eller, om stiftelsen förvaltas av ett handelsbolag, den som är bolagsman i bolaget,

3. den som ensam eller tillsammans med andra har rätt att företräda ett dotterföretag till stiftelsen eller, om företaget är ett handelsbolag, är bolagsman i bolaget,

4. den som är gift med eller är syskon eller släkting i rätt upp- eller nedstigande led till en person som avses i 1--3,

5. den som är besvågrad med en person som avses i 1--3 i rätt uppeller nedstigande led eller så att den ene är eller har varit gift med den andres syskon, eller

6. en juridisk person över vars verksamhet någon som avses i 1—5 har ett bestämmande inflytande.

Vad som sägs i första stycket 4 och 5 skall även avse den som på grund av samboförhållande på liknande sätt är närstående till en person som avses i första stycket 1--3.

Första stycket 2--5 och andra stycket gäller inte vid utlåning till någon som omfattas av dessa bestämmelser om stiftelsen skall främja sitt syfte genom att lämna penninglån till eller ställa säkerhet för enskilda personer och låntagaren tillhör den personkrets som skall gynnas. Bestämmelsen i första stycket 6 gäller inte om gäldenären är ett dotterföretag till stiftelsen.

7 § Styrelsen eller förvaltaren skall besluta om stiftelsens namn, om stiftelseförordnandet inte innehåller någon föreskrift om namn för stiftelsen.

Vad som sägs i denna lag om föreskrifter i ett stiftelseförordnande gäller också beslut som fattats enligt första stycket.

8 § Styrelsen eller förvaltaren svarar för att stiftelsen fullgör sin bokföringsskyldighet m.m. enligt bokföringslagen (1999:1078) eller, i förekommande fall, sin skyldighet att föra räkenskaper enligt 3 kap. 2 § denna lag.

Styrelsen eller förvaltaren svarar för att stiftelseförordnandet och övriga handlingar avseende stiftelsen förvaras på ett ordnat och betryggande sätt. Lag (1999:1106).

Egen förvaltning

9 § Styrelsen skall utse och entlediga ledamöter om inte annat följer av stiftelseförordnandet.

Ett uppdrag som ledamot i en styrelse med två eller flera ledamöter upphör, om ledamoten anmäler det hos den som har utsett honom eller, om denne inte kan nås, hos styrelsen.

Ett uppdrag som ledamot i en styrelse med endast en ledamot upphör, om ledamoten anmäler det hos tillsynsmyndigheten och hos den som har utsett honom, om denne kan nås.

10 § Styrelsen för en stiftelse får inte bestå av enbart stiftaren eller stiftarna. Den som är underårig eller försatt i konkurs eller som har förvaltare enligt 11 kap. 7 § föräldrabalken kan inte vara styrelseledamot.

11 § Inom styrelsen skall en ledamot vara ordförande. Ordföranden skall se till att sammanträden hålls när det behövs. Styrelsen skall sammankallas om en styrelseledamot begär det.

Ordföranden skall väljas av styrelsen. Vid lika röstetal avgörs valet genom lottning.

Bestämmelserna i andra stycket gäller endast om inte annat följer av stiftelseförordnandet

12 § Styrelsen är beslutför, om mer än hälften av hela antalet styrelseledamöter är närvarande. Om det i stiftelseförordnandet föreskrivs att fler styrelseledamöter måste vara närvarande, gäller i stället det. Om inte stiftelseförordnandet föreskriver en särskild

röstmajoritet, gäller som styrelsens beslut den mening som mer än hälften av de närvarande röstar för eller, vid lika röstetal, den mening som ordföranden biträder.

13 § Över styrelsens beslut skall protokoll föras.

14 § En styrelseledamot får inte handlägga frågor som rör avtal mellan honom och stiftelsen. Han får inte heller handlägga frågor om avtal mellan

stiftelsen och tredje man, om han i frågan har ett väsentligt intresse som kan strida mot stiftelsens. Med avtal

jämställs annan rättshandling samt rättegång eller annan talan.

Är styrelsen enligt första stycket förhindrad att företräda stiftelsen, får tillsynsmyndigheten på styrelsens begäran förordna en god man att företräda stiftelsen i styrelsens ställe.

15 § En styrelseledamot har rätt till skäligt arvode. Beslut om arvode får fattas av styrelsen.

Första stycket gäller endast om inte annat har föreskrivits i stiftelseförordnandet.

16 § Styrelsen företräder stiftelsen och tecknar dess namn och firma.

Styrelsen för en stiftelse som är registrerad i stiftelseregistret kan bemyndiga någon annan att företräda stiftelsen och teckna dess namn och firma. Styrelsen kan när som helst återkalla ett sådant bemyndigande. Bestämmelserna i 14 § gäller i fråga om den som

har fått ett sådant bemyndigande även om han inte är styrelseledamot.

Den som är underårig eller i konkurs eller som har förvaltare enligt 11 kap. 7 § föräldrabalken får inte bemyndigas att företräda stiftelsen.

En stiftelse som har försatts i konkurs företräds som konkursgäldenär av den styrelse som finns vid konkursens början. Bestämmelserna i 9 § gäller dock under konkursen.

17 § Om styrelsen eller någon annan företrädare för stiftelsen har företagit en rättshandling för stiftelsen och därvid överskridit sin befogenhet, gäller inte rättshandlingen mot stiftelsen, om den mot vilken rättshandlingen företogs insåg eller borde ha insett att befogenheten överskreds.

18 § Om det finns suppleanter för styrelseledamöterna, tillämpas bestämmelserna i denna lag om styrelseledamöter också på suppleanterna.

Anknuten förvaltning

19 § Ett uppdrag som förvaltare upphör, om förvaltaren anmäler det hos tillsynsmyndigheten och hos den som har utsett honom, om denne kan nås.

Stiftaren får inte vara förvaltare. Den som är försatt i konkurs får inte heller vara förvaltar

20 § Över de beslut som förvaltaren fattar rörande stiftelsen skall det föras protokoll.

21 § Förvaltaren får inte handlägga frågor som rör avtal mellan honom och stiftelsen. Förvaltaren får inte heller handlägga frågor om avtal mellan stiftelsen och tredje man, om förvaltaren i frågan har ett väsentligt intresse som kan vara stridande mot stiftelsens.

Med avtal jämställs rättegång eller annan talan.

Första stycket tillämpas också på företrädare för förvaltaren.

Är förvaltaren enligt första stycket förhindrad att företräda stiftelsen, får tillsynsmyndigheten på förvaltarens begäran förordna en god man att företräda stiftelsen i förvaltarens ställe.

22 § Förvaltaren har rätt till skäligt arvode i efterskott för kalenderår. Beslut om arvode får fattas av förvaltaren.

Första stycket gäller endast om inte annat har föreskrivits i stiftelseförordnandet.

23 § Förvaltaren företräder stiftelsen och tecknar dess namn och firma. Förvaltaren för en stiftelse som är registrerad i stiftelseregistret kan bemyndiga någon annan att företräda stiftelsen och teckna dess namn och firma. Förvaltaren kan när som helst återkalla ett sådant bemyndigande. Bestämmelserna i 21 § gäller i fråga om den som har fått ett sådant bemyndigande även om han inte är företrädare för förvaltaren.

Den som är underårig eller i konkurs eller som har förvaltare enligt 11 kap. 7 § föräldrabalken får inte bemyndigas att företräda stiftelsen.

En stiftelse som har försatts i konkurs företräds som konkursgäldenär av den förvaltare som finns vid konkursens början. Bestämmelserna i 19 § gäller dock under konkursen.

24 § Har förvaltaren eller någon annan företrädare för stiftelsen företagit en rättshandling för stiftelsen och därvid överskridit sin befogenhet, gäller inte rättshandlingen mot stiftelsen, om den mot vilken rättshandlingen företogs insåg eller borde ha insett att

befogenheten överskreds.

17.3. Law on NPO

There is no specific law on NPO in Sweden.

17.4. Law on NGO

There is no specific law on NGO in Sweden.

17.5. Law on other legal forms

There are no relevant laws on other legal forms.

17.6. Other laws

17.6.1. Lotteries Act

The Lotteries Act (1994:1000)[405]

Permit and Type Approval Requirements

9 Unless this Act provides otherwise, lotteries shall only be arranged after a permit has been obtained.

General Permit Requirements

10 Lottery permits must only be granted if it can be assumed that the operations will be conducted in a manner appropriate from a general point of view and in accordance with directions, conditions and regulations issued.

Permit Periods

11 Lottery permits shall relate to a certain period of time and a certain area where the lottery operations are permitted to be conducted. Unless there are particular reasons for it to be otherwise, the area shall be the area where the organization applying for the permit principally conducts its activities. Permits shall be granted to the entities arranging the lotteries.

Conditional Permits

12 The supervisory authority may attach special conditions and inspection and public order regulations to lottery permits.

Principal

13 There shall be a principal approved by the supervisory authority for each lottery subject to permit and arranged by a legal entity. The supervisory authority may grant exemption from the requirement of a principal, if one is manifestly not required.

Type Approval

14 Sealed lottery tickets and bingo cards used in lotteries shall be of an approved type. This shall also apply to technical equipment used for stakes, drawing of prizes or monitoring of true lotteries and bingo games. Conditions may be attached to Type Approval decisions.

True lotteries

To whom permits may be granted

15 Permits to arrange true lotteries must only be granted to Swedish legal entities that are non-profit associations and that

1. under their constitution have as their principal purpose the promotion of objects that are of public benefit within the country

2. conduct activities that principally satisfy such an object,

3. do not refuse anyone to become a member, unless there are particular reasons for this with regard to the nature or extent of the association's activities or object or for any other reason, and

4. need income from lotteries for their activities.

[405] http://www.lotteriinsp.se/upload/Övrigt/Engelska/Lotteries%20Act.pdf, 2 December 2004.

Permits may if there are special reasons also be granted to legal entities other than non-profit associations or legal entities with the principal aim of promoting objects that are for the public benefit outside the country.

Permit Requirements

16 Permits to arrange true lotteries may be granted, if

1. the value of the lottery prizes corresponds to at least 35 percent and not more than 50 percent of the value of the stakes,

2. the prize share is stated on the lottery tickets, the subscription lists or at the location where the lottery is held, and

3. it can be assumed that the lottery will give the applicant reasonable revenue and that this will be used for the relevant object of public benefit.

An estimate of probable prize results may be included in the basis for calculation of the value of prizes as referred to the first paragraph 1. This applies to lotteries with a list of prizes determined in advance and conducted in several counties. The requirement under the first paragraph 3 relating to reasonable revenue shall not apply if there are special reasons for it to be otherwise. If the lottery tickets are to be sold in a lottery ticket vending machine, it is further required that

1. a list of prizes has been determined in advance,

2. prizes have been drawn in advance in the presence of an inspector approved by the supervisory authority, and

3. the machine does not pay out any prize. Act (2003:346).

Lotteries requiring registration

17 Organizations referred to in Section 15 and active principally in one single municipality may after registration arrange true lotteries during a three-year period, if

1. the lotteries are conducted only within the municipality or municipalities where the organization is active,

2. the lotteries are not conducted from a fixed place of sale provided by a service company,

3. the total stake amount of the lotteries arranged in the three-year period is not more than 20 base amounts,

4. any prize in the form of cash amounts to not more than one base amount,

5. the value of the prizes in each lottery corresponds to at least 35 percent and not more than 50 percent of the value of the stakes,

6. the prize share is stated on the lottery tickets, the subscription lists or at the location where the lottery is conducted, and

7. the lotteries have principals who are approved by the registration authority. The registration authority may grant exemption from the requirement relating to a principal under the first paragraph 7 if one is manifestly not required. The special requirements provided for lotteries referred to in section 16 fourth paragraph shall apply also to such lotteries. Act (2002:592).

Section 18 is repealed by Act (2002:592).

Lotteries not requiring permits

19 Organizations referred to in section 15 first paragraph may arrange true lotteries without permit, if

1. the lottery is arranged in connexion with

a) a function or gathering arranged by or participated in by the organization or

b) a bingo game arranged by the organization,

2. the lottery is conducted solely within the area intended for the function, gathering or bingo game,

3. the value of each stake amounts to not more than 1/6 000 base amount,

4. the value of the top prize amounts to not more than 1/6 base amount,

5. the total value of the prizes corresponds to at least 35 percent and not more than 50 percent of the value of the stakes, if the number of stakes and prizes and the value of these are determined according to a prepared schedule,

6. the prize share is stated on the lottery tickets or the subscription lists or on the premises where the lottery is conducted,

7. persons purchasing lottery tickets are when purchasing the lottery tickets notified of when and where prizes will be drawn and in what way the result of the draw will be made available to the general public, unless the prizes have already been drawn, and

8. prizes are drawn in public before the function, gathering or bingo game closes for the day, unless the prizes have been drawn already before the lottery tickets were sold. Sale of lottery tickets by means of entering details on subscription lists may, notwithstanding the provisions of the first paragraph 2, commence four weeks prior to the function or gathering taking place. Act (2001:1045).

20 True lotteries may also be arranged in cases other than those referred to in section 19, if

1. the lottery is arranged in connexion with

a) a public amusement event,

b) a public event in support of an object of public benefit, or

c) a public gathering for the performance of an artistic work in support of an object of public benefit

2. the lottery is conducted solely within the area intended for the event or gathering,

3. the prizes solely consist of goods or services,

4. the value of each stake amounts to not more than 1/6 000 base amount,

5. the value of the top prize amounts to not more than 1/60 base amount,

6. the prizes are handed out immediately in connexion with participation in the lottery,

7. the total value of the prizes corresponds to at least 35 percent and not more than 50 percent of the value of the stakes, if the number of stakes and prizes and the value of these are determined according to a prepared schedule, and

8. the prize share is stated on the lottery tickets or displayed on the premises where the lottery is conducted. Act (2001:1045).

21 True lotteries may be arranged without permit in connexion with the publication of printed periodical publications where a prizewinner is selected in a competition arranged in the publication, if

1. participation in the lottery is not conditional on possession of the publication or payment of a stake, and

2. the value of the prize amounts to not more than 1/60 base amount. Act (2002:592).

Supervision and monitoring

Central and local supervision

48 The National Gaming Board is charged with central monitoring of compliance with this Act and regulations issued pursuant to this Act. The National Gaming Board is also charged with more detailed supervision of lotteries arranged under permit from the Board or the government.

The municipal licensing and supervisory authority and the country administrative board are charged with more detailed supervision of lotteries that are permitted to be arranged under the permit of or after registration with the authority.

County administrative boards and municipalities shall assist the National Gaming Board in its exercise of central supervision.

Inspectors

49 The licensing authority or the registration authority shall appoint an inspector of such true lotteries as are referred to in section 16, 17 and 21 b §§ and shall determine the inspector's fees. The fees shall be paid by the entities arranging the lotteries.

Entities that subsequent to registration arranges lotteries pursuant to section 17 shall on or before 15 February of each year account to the inspector for lotteries that have been arranged in the preceding calendar year. The inspector shall on or before 1 April of every year and on expiry of each permit period submit information to the registration authority about the total amount of stakes in lotteries arranged in the period. Act (2002:592).

Duty to submit information

50 Permit holders under this Act or those who pursuant to section 17 arrange lotteries after registration are obliged at the supervisory

authority's request to submit any information or documentation or other items required for supervision

Warning and revocation of permits

51 If a permit holder fails to comply with the provisions of this Act or directions, conditions or regulations issued pursuant to this Act, the authority granting the permit may issue a warning or revoke the permit. The permit may also be revoked or amended if the grounds for granting the permit no longer are present or have changed. Decisions to issue a warning or revoke a permit shall have immediate effect, unless otherwise determined.

Orders and prohibitions

52 Supervisory authorities may issue orders and prohibitions required for compliance with this Act and any directions and conditions issued pursuant to the Act shall be complied with. Breach of such order or prohibition may be made subject to a fine.

17.6.2. Income Tax Act

II. Income Tax Act "Incomstskattelag" 1999:1229)[406]

7 kap. Vissa stiftelser, ideella föreningar, registrerade trossamfund och andra juridiska personer

Innehåll

1 § I detta kapitel finns bestämmelser om undantag från skattskyldighet för

- staten, kommuner och pensionsstiftelser i 2 §,

- stiftelser i 3-6 §§,

- ideella föreningar i 7-13 §§,

- registrerade trossamfund i 14 §,

- vissa andra juridiska personer i 15-20 §§, och

- ägare av vissa fastigheter i 21 §.

I fråga om begränsat skattskyldiga gäller bestämmelserna de inkomster som de är skattskyldiga för enligt 3 eller 6 kap.

Helt undantagna juridiska personer

2 § /Upphör att gälla U:2005-01-01/

Helt undantagna från skattskyldighet är

1. staten,

2. landsting, kommuner och kommunalförbund,

3. pensionsstiftelser enligt lagen (1967:531) om tryggande av pensionsutfästelse m.m., och

4. samordningsförbund enligt 4 § lagen (2003:1210) om finansiell samordning av rehabiliteringsinsatser mellan allmän försäkringskassa, länsarbetsnämnd, kommun och landsting.

I lagen (1990:661) om avkastningsskatt på pensionsmedel finns bestämmelser om avkastningsskatt för pensionsstiftelser. Lag (2003:1214).

2 § /Träder i kraft I:2005-01-01/

Helt undantagna från skattskyldighet är

1. staten,

2. landsting, kommuner och kommunalförbund,

3. pensionsstiftelser enligt lagen (1967:531) om tryggande av

pensionsutfästelse m.m., och

4. samordningsförbund enligt 4 § lagen (2003:1210) om finansiell samordning av rehabiliteringsinsatser.

I lagen (1990:661) om avkastningsskatt på pensionsmedel finns bestämmelser om avkastningsskatt för pensionsstiftelser.Lag (2004:790).

Stiftelser

Skattskyldighet

[406]http://62.95.69.15/cgi-bin/thw?${APPL}=SFST&${BASE}=SFST&${THWIDS}=1.39/27839&${HTML}=sfst_dok&${TRIPSHOW}=format=THW&${THWURLSAVE}=39/27839, 2 December 2004.

3 § En stiftelse är skattskyldig bara för inkomst av sådan näringsverksamhet som avses i 13 kap. 1 §, om stiftelsen uppfyller

- ändamålskravet i 4 §,

- verksamhetskravet i 5 §, och

- fullföljdskravet i 6 §.

En stiftelse som uppfyller kraven i första stycket är dock inte skattskyldig för kapitalvinster och kapitalförluster.

Särskilda bestämmelser om pensionsstiftelser finns i 2 § och om vissa andra stiftelser i 15-18 §§.

Ändamålskravet

4 § Stiftelsen skall ha till huvudsakligt ändamål att

1. främja vård och uppfostran av barn,

2. lämna bidrag för undervisning eller utbildning,

3. bedriva hjälpverksamhet bland behövande,

4. främja vetenskaplig forskning,

5. främja nordiskt samarbete, eller

6. stärka Sveriges försvar under samverkan med militär eller annan myndighet.

Ändamålen får inte vara begränsade till vissa familjer eller bestämda personer.

Verksamhetskravet

5 § Stiftelsen skall i den verksamhet som bedrivs uteslutande eller så gott som uteslutande tillgodose sådant ändamål som anges i 4 §.

Fullföljdskravet

6 § Stiftelsen skall, sett över en period av flera år, bedriva en verksamhet som skäligen motsvarar avkastningen av stiftelsens tillgångar.

Ideella föreningar

Skattskyldighet

7 § En ideell förening är skattskyldig bara för inkomst av sådan näringsverksamhet som avses i 13 kap. 1 §, om föreningen uppfyller

- ändamålskravet i 8 §,

- verksamhetskravet i 9 §,

- fullföljdskravet i 10-12 §§, och

- öppenhetskravet i 13 §.

En förening som uppfyller kraven i första stycket är dock inte skattskyldig för

1. kapitalvinster och kapitalförluster,

2. sådan inkomst som kommer från en självständig näringsverksamhet eller en särskild förvaltningsenhet som avser fastighet, om inkomsten till huvudsaklig del kommer från

- verksamhet som är ett direkt led i främjandet av sådana ändamål som avses i 8 § eller som har annan naturlig anknytning till sådana ändamål, eller

- verksamhet som av hävd utnyttjats som finansieringskälla för ideellt arbete, eller

3. inkomst från innehav av en fastighet som tillhör föreningen och som används i föreningens verksamhet på sådant sätt som anges i 3 kap. 4 § fastighetstaxeringslagen (1979:1152).

Särskilda bestämmelser om vissa ideella föreningar finns i 15- 17 §§.

Ändamålskravet

8 § Föreningen skall ha till huvudsakligt syfte att främja sådana ändamål som anges i 4 § eller andra allmännyttiga ändamål, såsom religiösa, välgörande, sociala, politiska,

idrottsliga, konstnärliga eller liknande kulturella ändamål.

Ändamålen får inte vara begränsade till vissa familjers, föreningens medlemmars eller andra bestämda personers ekonomiska intressen.

Verksamhetskravet

9 § Föreningen skall i den verksamhet som bedrivs uteslutande eller så gott som uteslutande tillgodose sådana ändamål som anges i 8 §.

Fullföljdskravet

10 § Föreningen skall, sett över en period av flera år, bedriva en verksamhet som skäligen motsvarar avkastningen av föreningens tillgångar.

11 § Skatteverket får medge undantag från fullföljdskravet i 10 § för en förening som avser att förvärva en fastighet eller annan anläggning som är avsedd för den ideella verksamheten.

Detsamma gäller om en förening avser att genomföra omfattande byggnads-, reparations- eller anläggningsarbeten på en fastighet som används av föreningen.

Beslutet får avse högst fem beskattningsår i följd. Det får förenas med villkor att föreningen skall ställa säkerhet eller liknande för den inkomstskatt eller förmögenhetsskatt som föreningen kan bli skyldig att betala på grund av omprövning av taxeringarna för de år som beslutet avser, om det upphör att gälla enligt 12 §.

Skatteverkets beslut får överklagas hos allmän förvaltningsdomstol. Prövningstillstånd krävs vid överklagande till kammarrätten. Lag (2003:669).

12 § Om föreningen inte inom föreskriven tid har genomfört den avsedda investeringen eller inte har iakttagit något annat villkor i beslutet, är föreningen skattskyldig som om

undantaget inte hade medgetts.

Öppenhetskravet

13 § Föreningen får inte vägra någon inträde som medlem, om det inte finns särskilda skäl för det med hänsyn till arten eller omfattningen av föreningens verksamhet eller föreningens syfte eller annat.

Registrerade trossamfund

14 § Bestämmelserna om ideella föreningar i 7-13 §§ tillämpas också i fråga om registrerade trossamfund.

Vissa andra juridiska personer

15 § Följande juridiska personer är skattskyldiga bara för inkomst av sådan näringsverksamhet som avses i 13 kap. 1 §:

- sådana domkyrkor, lokalkyrkor eller dylikt som hör till Svenska kyrkan, i deras egenskap av ägare till vissa tillgångar som är avsedda för Svenska kyrkans verksamhet,

- sjukvårdsinrättningar som inte bedrivs i vinstsyfte,

- barmhärtighetsinrättningar, och

- hushållningssällskap med stadgar som har fastställts av regeringen eller den myndighet som regeringen bestämt.

En juridisk person som uppfyller kraven i första stycket är dock inte skattskyldig för kapitalvinster och kapitalförluster.

16 § /Upphör att gälla U:2005-01-01/

Följande juridiska personer är skattskyldiga bara för inkomst på grund av innehav av fastigheter:

- akademier,

- allmänna undervisningsverk,

- sådana sammanslutningar av studerande vid svenska universitet och högskolor som de studerande enligt lag eller annan författning är skyldiga att vara medlemmar i, samt

samarbetsorgan för sådana sammanslutningar med ändamål att sköta de uppgifter som sammanslutningarna enligt författningen ansvarar för,

- regionala utvecklingsbolag som med stöd av 1 § lagen (1994:77) om beslutanderätt för regionala utvecklingsbolag fått rätt att pröva frågor om stöd till näringsidkare samt moderbolag till sådana utvecklingsbolag,

- allmänna försäkringskassor,

- arbetslöshetskassor,

- personalstiftelser som avses i lagen (1967:531) om tryggande av pensionsutfästelse m.m. och vars ändamål uteslutande är att lämna understöd vid arbetslöshet, sjukdom eller olycksfall,

- stiftelser som bildats enligt avtal mellan organisationer av arbetsgivare och arbetstagare med ändamål att lämna avgångsersättning till friställda arbetstagare eller främja

åtgärder till förmån för arbetstagare som blivit uppsagda eller löper risk att bli uppsagda till följd av driftsinskränkning, företagsnedläggning eller rationalisering av företags

verksamhet eller med ändamål att lämna permitteringslöneersättning, och

- bolag eller annan juridisk person som uteslutande har till uppgift att lämna permitteringslöneersättning.

16 § /Träder i kraft I:2005-01-01/

Följande juridiska personer är skattskyldiga bara för inkomst på grund av innehav av fastigheter:

- akademier,

- allmänna undervisningsverk,

- sådana sammanslutningar av studerande vid svenska universitet och högskolor som de studerande enligt lag eller annan författning är skyldiga att vara medlemmar i, samt

samarbetsorgan för sådana sammanslutningar med ändamål att sköta de uppgifter som sammanslutningarna enligt författningen ansvarar för,

- regionala utvecklingsbolag som med stöd av 1 § lagen (1994:77) om beslutanderätt för regionala utvecklingsbolag fått rätt att pröva frågor om stöd till näringsidkare samt

moderbolag till sådana utvecklingsbolag,

- arbetslöshetskassor,

- personalstiftelser som avses i lagen (1967:531) om tryggande av pensionsutfästelse m.m. och vars ändamål uteslutande är att lämna understöd vid arbetslöshet, sjukdom eller olycksfall,

- stiftelser som bildats enligt avtal mellan organisationer av arbetsgivare och arbetstagare med ändamål att lämna avgångsersättning till friställda arbetstagare eller främja

åtgärder till förmån för arbetstagare som blivit uppsagda eller löper risk att bli uppsagda till följd av driftsinskränkning, företagsnedläggning eller rationalisering av företags

verksamhet eller med ändamål att lämna permitteringslöneersättning, och

- bolag eller annan juridisk person som uteslutande har till

uppgift att lämna permitteringslöneersättning. Lag (2004:790).

17 § Följande juridiska personer är också skattskyldiga bara

för inkomst på grund av innehav av fastigheter:

- Aktiebolaget Svenska Spel och dess helägda dotterbolag som bara bedriver spelverksamhet,

- Aktiebolaget Trav och Galopp,

- Alva och Gunnar Myrdals stiftelse,

- Apotekarsocietetens stiftelse för främjande av farmacins utveckling m.m.,

- Bokbranschens Finansieringsinstitut Aktiebolag,

- Dag Hammarskjölds minnesfond,

- Fonden för industriellt samarbete med u-länder,

- Fonden för svenskt-norskt industriellt samarbete,

- Handelsprocedurrådet,

- Industri- och nyföretagarfonden,

- Jernkontoret, så länge kontorets vinstmedel används till allmänt nyttiga ändamål och utdelning inte lämnas till delägarna,

- Konung Carl XVI Gustafs 50-årsfond för vetenskap, teknik och miljö,

- Nobelstiftelsen,

- Norrlandsfonden,

- Olof Palmes minnesfond för internationell förståelse och gemensam säkerhet,

- SSR - Sveriges Standardiseringsråd, så länge dess vinstmedel används till allmänt nyttiga ändamål och utdelning inte lämnas till medlemmarna,

- Stiftelsen Industricentra,

- Stiftelsen industriellt utvecklingscentrum i övre Norrland,

- Stiftelsen Landstingens fond för teknikupphandling och produktutveckling,

- Stiftelsen Produktionstekniskt centrum i Borås för tekoindustrin - PROTEKO,

- Stiftelsen Samverkan universitet/högskola och näringsliv i Stockholm och de sex motsvarande stiftelserna med säte i Luleå, Umeå, Uppsala, Linköping, Göteborg och Lund,

- Stiftelsen Svenska Filminstitutet,

- Stiftelsen Sveriges Nationaldag,

- Stiftelsen Sveriges teknisk-vetenskapliga attachéverksamhet,

- Stiftelsen UV-huset,

- Stiftelsen ÖV-huset,

- Svenska bibelsällskapets bibelfond,

- Svenska kyrkans stiftelse för rikskyrklig verksamhet,

- Svenska skeppshypotekskassan,

- Svenska UNICEF-kommittén,

- Sveriges exportråd, och

- TCO:s internationella stipendiefond till statsminister Olof Palmes minne. Lag (2001:1176).

18 § Bestämmelserna om begränsning i skattskyldigheten I 15-17 §§ tilllämpas för stiftelser bara om fullföljdskravet i 6 § är uppfyllt. Om det finns särskilda krav när det gäller verksamheten eller liknande, tillämpas bestämmelserna om begränsning i skattskyldigheten bara om stiftelserna i sin verksamhet uteslutande eller så gott som uteslutande uppfyller dessa krav. När det anges att stiftelserna uteslutande skall

bedriva viss verksamhet gäller dock det.

19 § Understödsföreningar är skattskyldiga bara för inkomst på grund av innehav av sådan fastighet som inte förvaltas i livförsäkringsverksamhet.

I lagen (1990:661) om avkastningsskatt på pensionsmedel finns bestämmelser om avkastningsskatt för understödsföreningar.

20 § Producentorganisationer är undantagna från skattskyldighet för inkomst som avser marknadsreglering enligt lagen (1994:1709) om EG:s förordningar om den gemensamma

fiskeripolitiken.

Ägare av vissa fastigheter

21 § Ägare av en sådan fastighet som avses i 3 kap. 2 § fastighetstaxeringslagen (1979:1152) är inte skattskyldig för inkomst från sådan användning av fastigheten som gör att byggnaden enligt 2 kap. 2 § fastighetstaxeringslagen skall anses som annan specialbyggnad än kommunikationsbyggnad, distributionsbyggnad eller reningsanläggning.

Ägare av en sådan fastighet som avses i 3 kap. 3 § fastighetstaxeringslagen är inte skattskyldig för inkomst från sådan användning av fastigheten som avses i den paragrafen.

Annan ägare av en sådan fastighet som avses i 3 kap. 4 § fastighetstaxeringslagen än en sådan ideell förening eller ett sådant registrerat trossamfund som uppfyller kraven i 7 §

första stycket är inte skattskyldig för inkomst av fastigheten i den utsträckning den används för ändamål som avses i den paragrafen.

18. United Kingdom

18.1. Law on Associations

There is no specific law on associations in the United Kingdom.

18.2. Law on Foundations

There is no specific law on foundations in the United Kingdom.

18.3. Law on NPO

There is no specific law on NPO in the United Kingdom.

18.4. Law on NGO

There is no specific law on NGO in the United Kingdom.

18.5. Law on other legal forms

18.5.1. Charity

(a) England and Wales

The legal principles governing the charities in England under the "Draft Charities Bill for England and Wales"[407]:

Part 1 Meaning of 'Charity' and 'Charitable Purpose'

1 Meaning of 'Charity'

For the purposes of the law of England and Wales, 'charity' means a body or trust which – is established for charitable purposes only, and falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

Subsection (1) does not apply in relation to any reference to a charity in any other enactment if the term is defined by o by virtue of any such enactment.

A reference in any enactment or document to a charity within the meaning of the Charitable Uses Act 1601 (c.4) or the preamble to it shall be construed as a reference to a charity as defined by this section.

2 Meaning of 'charitable purpose'

(1) For the purpose of the law of England and Wales, a charitable purpose is a purpose which –

a. falls within subsection (2), and

b. is for the public benefit (see section 3).

A purpose falls within this subsection if it falls within any of the following descriptions of purposes –

the prevention or relief of poverty;

the advancement of education;

the advancement of religion;

the advancement of health;

the advancement of citizenship or community development;

the advancement of the arts, heritage or science;

the advancement of amateur sport;

the advancement of human right, conflict resolution or reconciliation;

the advancement of environmental protection or improvement;

the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;

the advancement of animal welfare;

any other purpose within subsection (4).

In subsection (2) –

paragraph d. includes the prevention or relief of sickness, disease or human suffering;

paragraph e. includes –

i. rural or urban regeneration, and

ii. the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,

in paragraph g. 'sport' means sport which involves physical skill and exertion; and

paragraph j. includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph.

The purposes within this subsection (see subsection (2)(1)) are –

any purposes not within paragraphs a. to k. of subsection (2) but recognised as charitable purposes under existing charity law;

any purposes that may reasonably be regarded as analogous to any purpose falling within any of those paragraphs or paragraph a. above; and

any purposes that may reasonably be regarded as analogous to any purposes which have been recognised under charity law as falling within paragraph b. above or this paragraph.

[407] http://www.official-documents.co.uk/document/cm61/6199/6199.pdf, 19 November 2004.

Where any of the terms used in any of paragraphs a. to f. or h. to k. of subsection (2), or in subsection (3), has a particular meaning under charity law, the term is to be taken as having the same meaning where it appears in that provision.

In this section –

'charity law' means the law relating to charities in England and Wales;

and

'existing charity law' means charity law as in force immediately before the day on which this section comes into force.

3 The 'public benefit' test

This section applies in connection with the requirement in section 2 (1) b. that a purpose falling within section 2 (2) must be for the public benefit if it is to be a charitable purpose.

In determining whether that requirement is satisfied in relation to any such purpose, it is not to be presumed that a purpose of a particular description is for the public benefit.

In this Part any reference to the public benefit is a reference to the public benefit as that terms is understood for the purposes of the law relating to charities in England and Wales.

Subsection (3) applies subject to subsection (2).

(b) Scotland

Legal Principles governing charities under the "Draft Charities and Trustee Investment (Scotland) Bill"[408]:

This definition sets out 13 'charitable purposes' and a second stage 'public benefit test':

- the prevention or relief of poverty
- the advancement of education
- the advancement of religion
- the advancement of health
- the advancement of civic responsibility or community development
- the advancement of the arts, heritage, culture or science
- the advancement of amateur sport
- the advancement of human rights, conflict resolution or reconciliation
- the advancement of environmental protection or improvement
- the provision of accommodation to those who need it by reason of age, ill-health, disability, financial hardship or other disadvantage
- the provision of care to the aged, people with a disability, young people or children
- the advancement of animal welfare
- any other purpose intended to provide community benefit.

In future any organisation wishing to qualify for charitable status will have to show:

first, that its purposes fall within one or more of the categories in the new list and, second, that it will provide public benefit.

It will no longer be the case that some causes are automatically presumed to be charitable.

In the draft Bill, we do not define public benefit. Instead we propose that OSCR should be required to publish guidance setting out how it will interpret public benefit, and how it will decide whether an organisation meets the charity test. It will be expected to consult with the sector before issuing the guidance. The final arbiter of 'public benefit' in Scotland will remain, of course, the Scottish Courts.

18.6. Other laws

18.6.1. Income and Corporation Taxes Act

Section 506 of the Income and Corporation Taxes Act (1988)[409].

(1) In this section, section 505 and Schedule 20—

"charity" means any body of persons or trust established for charitable purposes only.

[408] http://www.scotland.gov.uk/consultations/social/dctib-04.asp, 19 November 2004.

[409] http://www.legislation.hmso.gov.uk/acts/acts1988/Ukpga_19880001_en_43.htm#mdiv503, 19 November 2004.

Annex C.
International Statutes

19. Amended Proposal for a Council Regulation on the Statute for a European Association (EA)

Amended Proposal for a Council Regulation on the Statute for a European Association (EA)[410]

CHAPTER I

GENERAL PROVISIONS

Article 1

(Form of the EA)

1. A company may be set up within the territory of the Community in the form of a European Association (EA) on the conditions and in the manner laid down in this Regulation.

2. An EA shall be a grouping of natural and/or legal persons the members of which pay contributions or pool their knowledge or their activities on a permanent basis for a non–profit–making purpose, either in the general interest or in order to promote the trade or professional or other interests of its members in the most diverse areas. An EA shall be free to determine the activities necessary for the pursuit of its objectives, subject to the application at national level of the legal and administrative rules governing the carrying on of an activity or the practice of a profession, and provided its activities are compatible with the objectives of the Community, and the public interest. It shall be managed in a disinterested fashion.

3. The surplus and assets of an EA shall be devoted exclusively to the pursuit of its objectives.

4. Employee involvement in an EA shall be governed by the provisions of Directive 2002/…/EC.

Article 2

(Legal personality)

1. An EA shall have legal personality. It shall acquire it on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 9(1).

2. In each of the Member States, an EA shall enjoy the full legal capacity accorded to companies or firms within the meaning of the second paragraph of Article 48 of the Treaty.

3. The liability of an EA shall be limited to its assets.

4. If acts have been performed in an EA's name before its registration in accordance with Article 9(1) and the EA does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal entities which performed those acts shall be jointly and severally liable without limit therefor, in the absence of agreement to the contrary.

Article 3

(Formation)

1. An EA may be formed:

by five or more natural persons resident in two or more Member States;

by five or more natural persons and companies or firms within the meaning of Article 48 of the Treaty, formed under the law of a Member State, resident in at least two different Member States;

by at least two companies or firms within the meaning of the second paragraph of Article 48 of the Treaty which are governed by the law of at least two Member States;

by merger between those forms of company within the meaning of the second paragraph of Article 48 of the Treaty, which are recognised as a non-profit organisation by a Member State, provided that at least two of them are governed by the law of different Member States;

by conversion of those forms of company within the meaning of the second paragraph of Article 48 of the Treaty, which are recognised as a non-profit organisation by a Member State under, which has its registered office and head office in the Community if for at least two years it has had

[410] Council of the European Union 14791/02 from 6 December 2002.

an establishment or subsidiary governed by the law of another Member State.

2. A Member State may provide that a legal body the head office of which is not in the Community may participate in the formation of an EA provided that legal body is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

Article 4

(Statutes)

1. The statutes of an EA shall be in writing and signed by the founder members, they shall include at least:

(a) its name, preceded or followed by the abbreviation "EA";

(b) a statement of its objectives;

(c) the names and residences of the natural persons and the names of the entities which are founder members of the EA, indicating their legal form and registered offices in the latter case;

(d) the address of the EA's registered office;

(e) the conditions and procedures for the admission, expulsion and resignation of members;

(f) the rights and obligations of members;

(g) the number of members of the executive committee and their powers, the conditions governing their appointment and removal and the conditions under which the committee may delegate some or all of its powers to one or more persons whether or not they are members of the committee;

(h) the rules governing the operation of the executive committee, in particular the drawing up of the rules of procedure, the election of a chairman and the definition of his duties, the frequency of meetings, the rules governing quorums and majorities for decisions, members' right to information, the calling of meetings, the internal allocation of tasks, the replacement of members who cannot attend and, if appropriate, the preparation of a provisional budget;

(i) the distribution of net assets (or the liquidation surplus) after winding up, in accordance with the provisions of Article 46;

(j) the rules applicable to the operation of the general meeting, in particular the arrangements for convening the members, the establishment of the agenda, the quorum required for the adoption of decisions and detailed rules for members' exercise of voting rights;

(k) the manner in which a general meeting may be convened by a minority of members and/or the procedure by means of which minorities may add items to the agenda for a general meeting already convened and, where appropriate, the proportion of that minority in accordance with Article 30(2);

(l) all the detailed rules for the representation of members at general meetings;

(m)the conditions under which certain members may be allocated several votes or weighted votes.

2. For the purposes of this Regulation the "statutes of an EA" shall mean both the instrument of incorporation and, where they are subject of a separate document, the statutes of the EA itself.

Article 5

(Registered office)

The registered office of an EA shall be located within the Community, in the same Member State as its head office.

Article 6

(Transfer of registered office)

1. The registered office of an EA may be transferred to another Member State in accordance with paragraphs 2 to 16 below. Such transfer shall not result in the winding up of the EA or in the creation of a new legal person.

2. The executive committee shall draw up a transfer proposal and publicise it in accordance with Article 10, without prejudice to any additional form of publicity provided for by the Member State of the registered office. That proposal shall state the current name, the registered office and registration number of the EA and shall cover:

(a) the proposed registered office of the EA;

(b) the proposed statutes of the EA including, where appropriate, its new name;

(c) the proposed timetable for the transfer;

(d) any implication the transfer may have on employees' involvement;

(e) any rights provided for the protection of members and creditors.

3. The executive committee shall draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer to members, creditors and employees.

4. An EA's members, creditors, and any other body which according to national law can exercise this right, shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine, at the EA's registered office, the transfer proposal and the report drawn up in accordance with paragraph 3 and, on request, obtain copies of those documents free of charge.

5. Any member who opposed the transfer decision may enter his resignation within two months of the general meeting's decision. Membership shall terminate at the end of the financial year in which the resignation has been entered; the transfer shall not take effect in respect of that member.

6. No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 34(1).

7. Before the competent authority issues the certificate mentioned in paragraph 8, the EA shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors in respect of the EA have been adequately protected in accordance with requirements laid down by the Member State where the EA has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise (or may arise) prior to the transfer.

8. In the Member State in which an EA has its registered office, the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before transfer.

9. The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted, and evidence has been produced that the formalities required for registration in the country of the EA's new registered office have been completed.

10. The transfer of an EA's registered office and the consequent amendment of its statutes shall take effect on the date on which the EA is registered in accordance with Article 9(1) in the register for its new registered office.

11. When the EA's new registration has been effected, the register for its new registration shall notify the register for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.

12. The new registration and the deletion of the old registration shall be published in the Member States concerned, in accordance with Article 10.

13. On publication of an EA's new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the EA's registration from the register of its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the EA proves that such third parties were aware of the new registered office.

14. The laws of a Member State may provide that the transfer of a registered office shall not take place if any of that Member State's competent authorities opposes it within the two month period referred to in paragraph 5. Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

15. An EA may not transfer its registered office if proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

16. An EA which has transferred its registered office to another Member State shall be considered, in respect of any course of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member State where the EA was registered prior to the transfer, even if the EA is sued after the transfer.

Article 7

(Law applicable)

1. An EA shall be governed:

(a) by this Regulation;

(b) where expressly authorised by this Regulation, by the provisions of its statutes;

(c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, for those aspects not covered by it, by:

(i) the laws adopted by Member States in implementation of Community measures relating specifically to EAs;

(ii) the laws of Member States which would apply to associations or non-profit organisations formed in accordance with the law of the Member State in which the EA has its registered office. For the purposes of this Regulation, references to national law(s) or to national legislation should be understood as encompassing also customary rules and/or other arrangements, including agreements between trade unions and national associations, to the extent that they are considered in the Member State concerned as legally binding rules.

(iii) the provisions of its statutes, in the same way as for an association or non-profit organisation formed in accordance with the law of the Member State in which the EA has its registered office.

2. Where a Member State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a Member State for the purposes of identifying the law applicable under this paragraph.

Article 8

(Law applicable – principle of non-discrimination)

Subject to this Regulation, an EA shall be treated in every Member State as if it were an association or non-profit organisation formed in accordance with the law of the Member State in which it has its registered office.

Article 9

(Registration and disclosure requirements)

1. Every EA shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State, in accordance with the law applicable to public limited-liability companies.

2. An EA may not be registered unless an agreement on arrangements for employee involvement pursuant to Article [ ] of the Directive 2002/…/EC has been concluded, or a decision pursuant to Article [ ] of the Directive has been taken, or the period for negotiations pursuant to Article [ ] of the Directive has expired without an agreement having been concluded.

3. The statutes of the EA must not conflict at any time with the arrangements for employee involvement which have been so determined. Where new such arrangements determined pursuant to the Directive conflict with the existing statutes, the statutes shall to the extent necessary be amended.

In this case, a Member State may provide that the executive committee of the EA shall be entitled to proceed to amend the statutes without any further decision from the general meeting.

4. In order for an EA established by way of merger to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2002/ /EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating cooperatives must have been governed by participation rules before registration of the EA.

5. The law applicable, in the Member State where the EA has its registered office, to public limited-liability companies concerning disclosure requirements of documents and particulars shall apply by analogy to that EA.

Article 10

(Publication of documents in the Member States)

1. Publication of documents and particulars concerning an EA which must be made public under this Regulation shall be effected in the manner laid down in the laws of the Member State applicable to public limited-liability companies in which the EA has its registered office.

2. The national rules adopted pursuant to Directive 89/666/EEC shall apply to branches of an EA opened in a Member State other than that in which it has its registered office. However, Member States may provide for derogations from the national provisions implementing that Directive to take account of the specific features of associations.

Article 11

(Notice in the Official Journal of the European Communities)

1. Notice of an EA's registration and of the deletion of such registration shall be published for information purposes in the Official Journal of the European Communities after publication in accordance with Article 10. That notice shall state the name, number, date and place of registration of the EA, the date and place of publication and the title of the publication, the registered office of the EA and a summary of its objectives

2. Where the registered office of an EA is transferred in accordance with Article 6, notice shall be published giving the information provided in paragraph 1, together with that relating to the new registration.

3. The particulars referred to in paragraph 1 shall be forwarded to the Official Publications Office of the European Communities within one month of the publication referred to in Article 10(1).

Article 12

(Particulars to be stated in the documents)

1. The law applicable, in the Member State where the EA has its registered office, to public limited-liability companies regulating the content of the letters and documents sent to third parties shall apply by analogy to that EA.

2. The name of the EA shall be preceded or followed by the abbreviation "EA" and, where appropriate, by the word "limited". Only EAs may include the acronym "EA" before or after their name in order to determine their legal form.

3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the acronym "EA" appears shall not be required to alter their names.

CHAPTER II FORMATION

Section 1 Formation by Merger

Article 13

(Procedures for formation by merger)

An EA may be formed by means of a merger carried out in accordance with:

– the procedure for merger by absorption;

– the procedure for merger by the formation of a new legal person.

Article 14

(Law applicable in the case of merger)

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each association involved in the formation of an EA by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of associations and, failing that, the provisions applicable to internal mergers of public limited liability companies under the law of that State.

Article 15

(Grounds for opposition to a merger)

The laws of a Member State may provide that an association governed by the law of that Member State may not take part in the formation of an EA by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 22(2). Such opposition may be based only on grounds of public interest.

Review by a judicial authority shall be possible.

Article 16

(Conditions of merger)

1. The management or administrative organ of merging associations or non-profit organisations shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:

(a) the name and registered office of each of the merging associations or non-profit organisations together with those proposed for the EA;

(b) the date from which the transactions of the merging association or non-profit organisations will be treated for accounting purposes as being those of the EA;

(c) the forms of protection of the rights of creditors of the merging association or non-profit organisations;

(d) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging associations or non-profit organisations;

(e) the statutes of the EA;

(f) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2002/ /EC.

2. The merging associations or non-profit organisations may include further items in the draft terms of merger.

3. The law applicable to public limited-liability companies concerning the draft terms of a merger shall apply by analogy to the cross-border merger of cooperatives for the creation of an EA.

Article 17

(Explanation and justification of the terms of merger)

The administrative or management organs of each merging association or non-profit organisation shall draw up a detailed written report explaining and justifying the draft terms of merger from a legal and economic viewpoint.

Article 18

(Disclosure)

1. The law applicable to public limited-liability companies concerning the disclosure requirements of the draft terms of mergers shall apply by analogy to each of the merging associations or non-profit organisations, subject to the additional requirements imposed by the Member State to which the association or non-profit organisation concerned is subject.

2. Publication of the draft terms of merger in the national gazette shall include the following particulars for each of the merging associations or non-profit organisations:

(a) the type, name and registered office of each merging association or non-profit organisation;

(b) the address of the place or of the register in which the statutes and all other documents and particulars are filed in respect of each merging association or non-profit organisation, and the number of the entry in that register;

(c) an indication of the arrangements made in accordance with Article I for the exercise of the rights of the creditors of the association or non-profit organisation in question and the address at which complete information on those arrangements may be obtained free of charge;

(d) an indication of the arrangements made in accordance with Article I for the exercise of the rights of members of the association or non-profit organisation in question and the address at which complete information on those arrangements may be obtained free of charge;

(e) the name and registered office proposed for the EA;

(f) the conditions determining the date on which the merger will take effect pursuant to Article 23.

Article 19

(Right to Information)

1. Any member shall be entitled, at least one month before the date of the general meeting required to decide on the merger, to inspect at the registered office the following documents:

(a) the draft terms of merger mentioned in Article 15;

(b) the annual accounts and management reports of the merging associations or non-profit organisations for the three preceding financial years;

(c) the report from the association’s or non-profit organisation's administrative or management organs as provided for in Article 16.

2. A full copy of the documents referred to in paragraph 1 or, if he so wishes, an extract, may be obtained by any member on request and free of charge.

Article 20

(Approval of the terms of merger)

1. The general meeting of each of the merging associations or non-profit organisations shall approve the draft terms of the merger.

2. Employee involvement in the EA shall be decided upon pursuant to Directive 2002/ /EC. The general meetings of each of the merging associations or non-profit organisations may reserve the right to make registration of the EA conditional upon its express ratification of the arrangements so decided.

Article 21

(Laws applicable to formation by merger)

1. The law of the Member State governing each merging association or non-profit organisation

shall apply, taking into account the cross-border nature of the merger, with regard to the protection of the interests of creditors of the merging associations or non-profit organisations,

2. A Member State may, in the case of the merging associations or non-profit organisations governed by its law, adopt provisions designed to ensure appropriate protection for members who have opposed the merger.

Article 22

(Scrutiny of merger)

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging association or non-profit organisation, in accordance with the law of the Member State to which the merging association or non-profit organisation is subject that apply to mergers of associations or non-profit organisations.

2. In each Member State concerned the court, notary or other competent authority shall issue a certificate attesting to the completion of the pre-merger acts and formalities.

3. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the EA, by the court, notary or other competent authority in the Member State of the proposed registered office of the EA able to scrutinise that aspect of the legality of mergers of associations or non-profit organisations.

4. To that end, each merging association or non-profit organisation shall submit to the competent authority of the Member State of the proposed registered office of the EA the certificate referred to in paragraph 2 within six months of its issue together with a copy of the draft terms of merger approved by that association or non-profit organisation.

5. The authority referred to in paragraph 3 shall in particular ensure that the merging associations or non-profit organisations have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2002/ /EC.

6. The said authority shall also satisfy itself that the EA has been formed in accordance with the requirements of the law of the Member State in which it has its registered office.

Article 23

(Registration of merger)

1. A merger and the simultaneous formation of an EA shall take effect on the date on which the EA is registered in accordance with Article 9(1).

2. The EA may not be registered until all the formalities provided for in Article 21 have been completed.

Article 24

(Publication)

For each of the merging associations or non-profit organisations the completion of the merger shall be made public as laid down by the law of the Member State concerned.

Article 25

(Consequences of merger)

1. A merger carried out as laid down in the first indent of the first subparagraph of Article 13 shall have the following consequences ipso jure and simultaneously:

(a) all the assets and liabilities of each association or non-profit organisation being acquired are transferred to the absorbing legal person;

(b) the members of each association or non-profit organisation being absorbed become members of the absorbing legal person;

(c) the associations or non-profit organisations being absorbed cease to exist;

(d) the absorbing legal person assumes the form of an EA.

2. A merger carried out as laid down in the second indent of the first subparagraph of Article 13 shall have the following consequences ipso jure and simultaneously:

(a) all the assets and liabilities of the merging associations or non-profit organisations are transferred to the EA;

(b) the members of the merging associations or non-profit organisations become members of the EA;

(c) the merging associations or non-profit organisations cease to exist.

3. Where, in the case of a merger of associations or non-profit organisations, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging associations or non-profit organisations becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging associations or non-profit organisations or by the EA following its registration.

4. The rights and obligations of the participating associations or non-profit organisations in relation to terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the EA.

5. When the merger has been registered, the EA shall immediately inform the members of the associations or non-profit organisations being absorbed of the fact that they have been entered in the register of members.

Article 26

(Legality of the merger)

1. A merger may not be declared null and void once the EA has been registered.

2. The absence of scrutiny of the legality of the merger pursuant to Article 21 shall constitute one of the grounds for the winding-up of the EA.

Section 2: Conversion of an Existing Association or Non-Profit Organisation into an EA

Article 27

(Procedures for Formation by Conversion)

1. Without prejudice to Article 5 the conversion of an association or non-profit organisation into an EA shall not result in the winding-up of the association or non-profit organisation or in the creation of a new legal person.

2. The registered office may not be transferred from one Member State to another pursuant to Article 6 at the same time as the conversion is effected.

3. The administrative or management organ of the association or non-profit organisation in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications for members and employees of the adoption of the form of an EA.

4. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law at least one month before the general meeting called upon to decide thereon.

5. The general meeting of the association or non-profit organisation in question shall approve the draft terms of conversion together with the statutes of the EA.

6. Member States may make a conversion conditional on a favourable vote of a qualified majority or unanimity in the organ of the similar national legal entity to be converted within which employee participation is organised.

7. The rights and obligations of the association or non-profit organisiation to be converted regarding terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration, be transferred to the EA.

CHAPTER III:

STRUCTURE OF THE EA

Article 28

(Structure of Organs)

Under the conditions laid down by this Regulation an EA shall comprise:

(a) a general meeting

and

(b) an executive committee

Section 1

General meeting

Article 29

(Competence)

1. The general meeting shall be competent to take all decisions concerning amendment of the statutes, winding up, transfer of the registered office, conversion, the preparation of annual and consolidated accounts and the appointment of members of the executive committee.

2. In addition, the general meeting shall decide on matters for which it has competence under:

the statutes of the EA in accordance with the law of the Member State in which the EA's registered office is located;

the legislation of the Member State in which the EA's registered office is located concerning the powers of the general meetings of associations or non profit organisations;

the provisions of the legislation of the Member State in which an EA's registered office is located adopted in accordance with Directive ../.../EC supplementing the Statute for an EA with regard to the involvement of workers.

Article 30

(Holding of general meetings)

1. A general meeting shall be held at least once a year within six months of the end of the financial year. A Member State may, however, provide that the first general meeting may be held at any time in the eighteen months following an EA's formation.

2. General meetings may be convened in accordance with a decision taken by a previous general meeting, or by the executive committee at any time either on its own initiative or at the request of at least 20% or 1,000 of the members; the statutes may set a lower proportion.

3. The agenda for the general meeting held after the end of the financial year shall include at least the approval of the annual accounts and the budget of the following year.

Article 31

(Notice of meeting)

1. The period between the date of dispatch of the notice of the general meeting and its opening shall be at least thirty days. It may, however, be reduced in urgent cases.

Article 32

(Attendance and proxies)

Every member shall be entitled to speak and vote at general meetings on points that are included in the agenda, and may appoint another member to represent him in accordance with the statutes.

Article 33

(Voting rights)

Each member shall have one vote. If, however, the statutes give more than one vote or weighted votes to certain members, no one member shall hold a majority of the votes.

Article 34

(Decisions)

1. A general meeting shall act by majority of the votes validly cast by the members present or represented. The calculation of votes cast shall not include abstentions.

2. However, in the case of the amendment of the statutes, winding up, the transfer of the registered office and conversion, resolutions shall be passed by a majority of two–thirds of the votes of the members present or represented.

Section 2

The executive committee

Article 35

(Functions of the executive committee; appointment of members)

1. The executive committee shall manage the EA and shall represent it in dealings with third parties and in legal proceedings.

2. All competencies that are not specifically attributed by the EA’s statutes to the general meeting reside with the executive committee.

3. The executive committee shall consist of at least three members where employee

participation is regulated in accordance with Directive 2002/…/EC.

Article 36

(Term of office)

1. Members of the executive committee shall be appointed for a period laid down in the statutes not exceeding six years.

2. Subject to any restrictions laid down in the statutes, members may be re-appointed once or more than once for the period determined in accordance with paragraph 1.

Article 37

(Members)

The statutes of an EA may permit a company in the sense of Article 48 of the Treaty of Rome to be amember of the executive committee, provided that the law applicable to associations or non profit organisations in the Member State in which the EA's registered office is situated does not provide otherwise.

That company shall designate a natural person as its representative to exercise its functions on the executive committee. The representative shall be subject to the same conditions and obligations as if he were personally a member of the board.

Article 38

(Power of representation and liability of the EA)

1. Where the authority to represent the EA in dealings with third parties, in accordance with article 35 (1), is conferred on two or more members, those members shall exercise that authority collectively.

However, the statutes of the EA may provide that the EA shall be validly bound either by each of the members acting individually or by two or more of them acting jointly. Such a clause may be relied upon against third parties where it has been disclosed in accordance with Article 9.

2. Acts performed by an EA's bodies or representatives shall bind the EA vis à vis third parties, even where the acts in question are not in accordance with the objects of the EA, providing they do not exceed the powers conferred on them by the law of the Member State in which the EA has its registered office or which that law allows to be conferred on them.

Member States may, however, provide that the EA shall not be bound where such acts are outside the objects of the EA, if it proves that the third party knew that the act was outside those objects or could not in the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

3. The limits on the powers of the organs of the EA, arising under the statutes or from a decision of the competent organs, may never be relied on as against third parties, even if they have been disclosed.

4. The power to represent the EA may be conferred by the statutes on a single person or on several persons acting jointly or separately.

Article 39

(Civil liability)

Members of the executive committee shall be liable, in accordance with the provisions applicable to associations and non profit organisations in the Member State in which the EA's registered office is situated, for loss or damage sustained by the EA following any breach on their part of the legal, statutory or other obligations inherent in their duties.

Section 3

Daily Management

Article 40

(Daily Management)

The executive committee may appoint one or several persons responsible for the daily management of the association. Their powers may be relied upon against third parties.

CHAPTER IV

ANNUAL AND CONSOLIDATED ACCOUNTS, MEANS OF FINANCING, AUDITING AND DISCLOSURE

Article 41

(Preparation of annual and consolidated accounts)

1. For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the annual report accompanying them and their auditing and publication, an EA shall be subject to the legal provisions adopted in implementation of Directives 78/660/EEC and 83/349/EEC by the Member State in which it has its registered office.

2. Where an EA is not subject, under the law of the Member State in which the EA has its registered office, to a publication requirement such as provided for in Article 3 of Directive 68/151/EEC, the EA must at least make the documents relating to annual accounts available to the public at its registered office. Copies of those documents must be obtainable on request. The price charged for such copies shall not exceed their administrative cost.

Article 42

(System of supervision)

Where the law of a Member State requires all associations or non profit organisations, or a certain type of them, covered by the law of that State to join a legally authorised external body and to submit to a specific system of supervision carried out by that body, the arrangements shall automatically apply to an EA with its registered office in that Member State under the condition that this body meets the requirements of Directive 84/253/EEC.

CHAPTER V

WINDING UP, LIQUIDATION, INSOLVENCY AND CESSATION OF PAYMENTS

Article 43

(Winding up, insolvency and similar procedures)

As regards winding up, liquidation, insolvency, cessation of payments and similar procedures, an EA shall be governed by the legal provisions which would apply to an association or non-profit organisation formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision making by the general meeting.

Article 44

(Winding up by the court where the EA has its registered office)

1. On an application by any person with a legitimate interest or any competent authority, the court of the Member State where the EA has its registered office shall order the EA be wound up where it finds:

that the purpose of the EA is unlawful or that the EA's activities are being carried on contrary to the public interest in the Member State in which the EA has its registered office or in breach of the principle of an EA's non–profit–making purpose and disinterested nature;

that the conditions imposed in Article 3(1) are no longer fulfilled.

The court may allow the EA time to rectify the situation. If it fails to do so within the time allowed, the court shall order it to be wound up.

2. When an EA no longer complies with the requirement laid down in Article 5, the Member State in which the EA’s registered office is situated shall take appropriate measures to oblige the EA to regularise its situation within a specified period either:

by re–establishing its head office in the Member State in which its registered office is situated; or

by transferring the registered office by means of the procedure laid down in Article 6.

3. The Member State in which the EA’s registered office is situated shall seek judicial or other appropriate remedy with regard to any established infringement of Article 5. That remedy shall have suspensory effect on the procedures laid down in paragraphs 2.

4. Where it is established on the initiative of either the authorities or any interested party that an EA has its head office within the territory of a Member State in breach of Article 5, the authorities of that Member State shall immediately inform the Member State in which the EA’s registered office is situated.

Article 45

(Publication of winding-up)

Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding up including voluntary winding up, liquidation, insolvency or suspension

of payment procedures and any decision to continue operating shall be publicised in accordance with Article 10.

Article 46

(Distribution of the assets)

Net assets shall be distributed in accordance with the principle of disinterested distribution in the manner laid out by the statutes or, failing that, by the general meeting. For the purposes of the present Article, net assets shall comprise residual assets after payment of all amounts due to creditors and reimbursement of amounts due to the members.

Article 47

(Conversion into an association or non-profit organisation under Member State law)

1. An EA may be converted into an association or non-profit organisation governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.

2. The conversion of an EA into an association or non-profit organisation shall not result in winding–up or in the creation of a new legal person.

3. The executive committee shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications of its adoption for members and employees.

4. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law at least one month before the general meeting called to decide on conversion.

5. The general meeting of the EA shall approve the draft terms of conversion together with the statutes of the association or non-profit organisation. The decision of the general meeting shall be passed as laid down in the provisions of national law.

CHAPTER VI

FINAL PROVISIONS

Article 48

(Measures to be applied in the event of a breach of rules)

1. The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

2. Each Member State shall designate the competent authorities responsible for the application of this regulation

3. Member States shall determine, where no specific legislation exists governing associations, to which kind of non profit organisations the present Regulation shall apply.

Article 49

(Review of the Regulation)

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate.

Article 50

(Entry into force)

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities.

It shall apply from…

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the Council

The President

20. Proposal for a Regulation on a European Statute for Foundations

Proposal for a Regulation of the European Parliament and the Council on a Statute for a European Foundation[411]

Article 1 Form of the European Foundation

1. A foundation may be set up within the territory of the Community in the form of a European Foundation (EF) on the conditions and in the manner laid down in this Regulation.

2. An EF shall be an independently constituted and managed body, having the disposal of assets, whether or not in the form of an endowment, which are irrevocably dedicated to public benefit purposes.

3. An EF shall have minimum assets of 50,000 euros.

4. An EF must have activities in at least two Member States.

5. An EF shall have no members. It is governed by a board. Additional organs can be foreseen such as an advisory council(s) or a founders/donors assembly (composed of natural and legal persons).

6. An EF may be established in perpetuity or for a specified period of time, as expressed by the statutes.

7. All EF's assets and income shall be used in the pursuit of its public benefit purposes.

8. An EF shall have legal personality.

Article 2 Public benefit

1. Under this Regulation an EF shall be regarded as being of public benefit if, and only if:

(a) it serves the public interest at large at European/international level, and;

(b) its purposes include the promotion of the public interest in one or more of the following fields or any other field determined from time to time to be of public benefit:

• Arts, culture and historical preservation

• Assistance to, or protection of, people with disabilities

• Assistance to refugees and immigrants

• Civil or human rights • Consumer protection

• Development, international and domestic

• Ecology or the protection of the environment

• Education, training and enlightenment

• Elimination of discrimination based on race, ethnicity, religion, disability, or any other legally proscribed form of discrimination

• Prevention and relief of poverty

• Health or physical well-being and medical care

• Humanitarian or disaster relief

• European and international understanding

• Protection of, and support for, children and youth

• Protection of, and support for, disadvantaged individuals

• Protection or care of animals

• Science

• Social cohesion, including the promotion of respect for minorities

• Social and economic development

• Social welfare

• Sports, amateur athletics

Article 3 Legal personality

An EF shall have legal personality in all the Member States of the European Union. It shall acquire it on the day of its registration with the European Registration Authority under Article 6 below.

Article 4 Legal capacity

1. An EF shall be free to act in pursuit of its objects in any manner allowed for in its statutes which is consistent with its public benefit status and which is not against the laws of the

[411] http://www.efc.be/ftp/public/EU/LegalTF/european_statute.pdf, 8 April 2005.

Community or, in the case of activities carried out in a particular Member State, not against the applicable laws of that Member State.

2. An EF shall have the right to hold movable and immovable property, to receive and hold gifts or subsidies of any kind, including shares and other negotiable instruments, and gifts 'in kind' from any lawful source including from countries not belonging to the EU.

3. An EF shall have the capacity to carry out activities within any Member State of the EU and may carry out activities in any third country.

4. An EF shall have the capacity, and be free, to engage in trading or other economic activities provided that any income or surpluses are clearly and directly used in pursuance of its public benefit purposes and do not constitute the main aim of the EF.

Article 5 Formation

1. An EF shall be created:

• by will by any natural person(s) resident in one or more EU Member States.

• by notarial deed by any natural and/or legal person(s) or public body(s) resident in one or more EU Member States.

• under clause 4 of this article by merger between public benefit foundations legally established in one or several Member States.

• under clause 5 of this article by conversion of a public benefit foundation legally established in one Member State.

2. In this Article, 'public body' includes any entity, whether or not legally part of the state, national, regional or local government, or other legally constituted public authority, which provides public services or carries out public functions on a statutory basis.

3. Where an EF has been created by a public body it shall be managed independently of it.

4. Formation by merger

(a) It shall be for the board of each of the merging foundations to decide on the merger.

(b) The merger must be permissible under the statutes of each of the foundations.

(c) A detailed request for a merger ('Draft Terms of Merger) into an EF including:

i. the name and registered office of each of the merging public benefit foundations including the name and address proposed for the EF;

ii. the date from which the transactions of the merging foundations will be treated for accounting purposes as being those of the EF;

iii. the proposed statutes of the EF;

iv. forms of protection of the rights of creditors of the merging foundations;

v. information on arrangements for employee involvement according to the Directive (…); must be submitted to the competent authority in the Member State where each of the public benefit foundations is registered or has its main office.

(d) The merger must follow the requirements imposed by the Member State to which each foundation is subject including, where appropriate, the publication of the Draft Terms of Merger in the national gazette.

(e) In each Member State concerned, the competent authority shall issue a certificate of the completion of the pre-merger acts and formalities. This certificate, together with the Draft Terms of Merger, must be submitted to the European Registration Authority within the six months following its issue.

(f) The European Registration Authority shall register the merged foundation, once it has ensured that the merging foundations have approved and published Draft Terms of Merger in the same terms and that the need for employee involvement in the EF has been taken into account (see Article 6.7). Only then shall the merger take effect. The decision of the European Registration Authority shall be published in the European Official Journal according to Article 6.8 of this statute. Formalities for the transfer of certain assets will have to be taken into account either by the merging foundations or the EF.

(g) In cases of merger by the formation of a new legal person (EF), all assets and liabilities of each public benefit foundation shall be transferred to the EF, and the merging foundations shall cease to exist.

(h) In cases of merger by absorption, all assets and liabilities of the public benefit foundation being acquired shall be transferred to the absorbing public benefit foundation. The foundation being absorbed shall cease to exist and the absorbing legal person shall then become an EF.

5. Formation by conversion of a national foundation

(a) The board of the public benefit purpose foundation shall decide on the conversion to an EF and the new EF's statutes. The conversion shall not result in the winding up of the organisation or in the creation of a new legal person.

(b) The conversion must be permissible under the statutes of the foundation.

(c) A detailed request for conversion (Draft Terms of Conversion) including:

i. name and registered office of the converting public benefit organisation;

ii. the statutes of the EF;

iii. forms of protection of the rights of the foundation's creditors;

iv. information on arrangements for employee involvement according to the Directive (…); must be submitted to the competent foundation authority in the Member State, where the foundation is registered or has its main office.

(d) The request for conversion must follow the requirements imposed by the Member State. The competent authority shall issue a certificate of the completion of the conversion and all necessary formalities. This certificate, together with the Draft Terms of Conversion must be submitted to the European Registration Authority within the six months following its issue.

(e) The European Registration Authority shall register the foundation as an EF, once it has ensured that the foundation to be converted meets the criteria for an EF and that the need for employee involvement has been taken into account under Article 6.7 below. Only then shall the conversion take effect. The European Registration Authority's decision shall be published in the Official Journal according to Article 6.8 of this statute.

Article 6 Registration

1. A European Registration Authority shall be created, composed of at least five persons of good standing, at least one of whom shall be legally qualified and expert in foundation law.

2. The five persons composing the authority shall be appointed by decision of the European Council and European Parliament upon a proposal of the European Commission.

3. The registration authority shall be established under European law and in any individual case shall act independently of the European Union's institutions, of any governmental, quasi-governmental, or any other public body or institution, and be free of political influence.

4. It shall be the duty of the European Registration Authority to:

(a) maintain a register of EFs

(b) receive and hold public records, documents and other information required for the registration of an EF and its subsequent operation and to make them available for inspection by the public on request;

(c) determine the registration of EFs; and

(d) otherwise ensure that the requirements of this Regulation are adhered to.

5. Applications for registration as an EF made to the European Registration Authority shall be accompanied by the following documents:

(a) the founding documents;

(b) a statement of the assets to be set aside for the purposes of the EF;

(c) the statutes;

(d) the intended registered office address within the Community;

(e) the names and addresses of all members of the governing board;

(f) the names, objects and registered offices of founding organisations where these are legal entities, or similar relevant information as concerns public authorities.

6. The European Registration Authority may refuse to register an applicant otherwise in conformity with the requirements of this statute if, and only if, it deems the purpose of the applicant to be illegal, or it deems the refusal of registration necessary for the protection of public security or safety; for the prevention of crime; for the protection of health; or for the protection of the rights and freedoms of others and the maintenance of public order.

7. An EF may not be registered unless arrangements for employee involvement pursuant to Article (…) of the Directive (…) have been made.

8. The decision of the European Registration Authority shall be published in the Official Journal of the European Communities together with the information outlined in 5 (a) – (f) of this Article.

9. The European Registration Authority shall reach its decisions without unreasonable delay.

10. An EF shall inform the European Registration Authority of any changes to the information outlined in 5 (a) – (f) of this Article, and the new details shall be published in the Official Journal.

Article 7 Registered office and transfer of registered office

1. The registered office of an EF shall be located within the European Union.

2. The registered office of an EF may be transferred to another Member State. Such transfer shall not result in the winding up of the EF or the creation of a new legal entity.

(a) The governing board of the EF shall decide upon the transfer of office and shall submit to the European Registration Authority a transfer proposal, which shall cover:

i. the current name, registered office address, and registration number of the EF;

ii. the proposed registered office address of the EF, including where appropriate its new name and amended statutes;

iii. the proposed timetable for the transfer;

iv. a report explaining and justifying the legal and economic aspects as well as the employment effects of the transfer and explaining the implications of the transfer for creditors and contracting partners of the EF, where appropriate.

(b) The governing board shall transmit the transfer proposal to the European Registration Authority. The Authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer and shall then register the new address and amended statutes.

(c) The registration of the new address shall be published in the Official Journal of the European Communities, see Article 6.10.

(d) On publication of an EF's new registered address, the new registered office may be relied on.

(e) An EF may not transfer its registered office if proceedings for winding up, or other proceedings have been brought against it.

Article 8 Statutes

1. The statutes of the EF shall include at least:

(a) the name of the foundation, followed by the abbreviation "EF";

(b) a statement of its public benefit purpose;

(c) the address of the EF's registered office;

(d) the conditions for the admission, expulsion and resignation of members of the governing board;

(e) the rights and obligations of the governing board and its members;

(f) the function and structure of any additional organ;

(g) the procedures for amending the EF's statutes;

(h) the grounds for dissolution;

(i) the distribution of net assets after winding up; and

(j) the rules applicable to the calling and conduct of meetings of the governing board.

2. The EF's statutes shall also provide for the avoidance of actual or potential conflicts of interest between the personal or business interests of officers, board members, and employees of the EF, and the interests of the EF.

Article 9 Law applicable

1. An EF shall be governed:

(a) by this Regulation;

(b) where expressly entitled by this Regulation, by the provisions of its statutes; and (c) in the case of matters not regulated by this Regulation by:

i. the laws adopted by Member States in the implementation of Community measures relating specifically to EFs

ii. the laws of Member States, which apply to foundations and public benefit organisations formed in accordance with the law of the Member State in which the EF has its registered office.

iii. The provisions of its statutes, in the same way as for a public benefit foundation formed in accordance with the law of the Member State in which the EF has its registered office.

2. Where a Member State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a Member State for the purposes of identifying the law applicable under this paragraph. 3. Subject to this Regulation, an EF shall be treated in every Member State as if it were a foundation and public benefit organisation formed in accordance with the law of the Member State in which it has its registered office.

Article 10 Particulars to be stated in the EF's documents

Letters and documents sent to third parties by the EF shall state legibly:

(a) the name of the EF, followed by the abbreviation "EF";

(b) the number of the EF's entry in the register kept by the European Registration Authority;

(c) the address of the EF's registered office; and

(d) where appropriate, the fact that the EF is the subject of insolvency or dissolution proceedings.

Article 11 Governing board

1. An EF shall be governed by a board composed of at least three members.

2. The governing board shall take responsibility for all decisions with regard to the proper administration and conduct of the EF's affairs. The governing board shall manage the EF and shall represent it in dealings with third parties and in legal proceedings. Members of the board shall observe a duty of loyalty in the exercise of their responsibilities, shall act with diligence and care, and shall ensure compliance with the laws and statutes of the EF.

3. The governing board shall ensure the return to the European Registration Authority of all documentation required under Articles 6.4 and 13.2 of this Regulation.

4. It shall be the duty of the governing board to make available to the European Registration Authority all evidence material to any inquiry undertaken under Article 14.

5. The governing board shall decide upon the amendments of the statutes, subject to Article 15.1 in case they affect the purpose of the foundation.

6. The governing board of the EF may decide upon the transfer of the registered office, see Article 7.

7. Reasonable remuneration and reimbursement of expenses to the governing board may be provided.

Article 12 Liability of the EF and the governing board

1. The liability of an EF shall be limited to its assets.

2. Members of the governing board shall be personally liable to the EF and to injured third parties for the wilful or grossly negligent performance or neglect of their duties, but shall not otherwise be liable.

Article 13 Transparency and Accountability

1. An EF shall be obliged to keep full and accurate records of all financial transactions.

2. An EF shall be obliged to draw up and return to the European Registration Authority full and accurate annual statements of accounts and an annual activity report, within 12 months from the end of the accounting year. The annual activity report should list the grants distributed, taking into account the right of privacy of the beneficiary.

3. An EF with annual revenues in excess of €(x) and/or assets in excess of €(x) shall have its accounts professionally audited.

Article 14 Supervision

1. The European Registration Authority is the supervisory body for EFs. It shall have the duty to safeguard that the governing board acts in accordance with the EF's statutes and this Regulation.

2. Where the European Registration Authority has reasonable grounds to believe that the governing board of a foundation is not acting in accordance with the foundation's statutes or this Regulation, it shall have the power, in carrying out its duty under section 1 above, to inquire into the affairs of that foundation.

3. In the case that there is evidence that:

(a) the governing board has acted improperly with respect to the EF's statutes, and;

(b) the governing board refuses to act on a warning from the European Registration Authority;

the European Registration Authority shall have the power to order the governing board to comply with the foundation's statutes and this Regulation. If evidence of financial impropriety, serious mismanagement and/or abuse is brought to the notice of the European Registration Authority, the authority may designate an independent expert to inquire into the affairs of an EF.

4. In the case of inquiries carried out under sections 2 and 3 above, the European Registration Authority shall have the power to require the governing board and officers of the foundation to make available all and any evidence material to its effective conduct.

5. The European Registration Authority shall have the power to require the dismissal of any member of the governing board or officer of the foundation found guilty by a court of financial impropriety.

6. Exceptionally, if the European Registration Authority deems that the assets of the foundation are at serious and immediate risk, the European Registration Authority shall have the power temporarily to freeze the foundation's bank accounts and take such other emergency measures as it sees fit to protect the foundation's assets until such time as the matter can be brought before a court.

7. Where the European Registration Authority is satisfied that the foundation is unable properly to conduct its own affairs, it may appoint an independent receiver and manager to act in place of the governing board. The appointment of a receiver and manager must be reviewed by a court within three months.

8. If the purpose of the foundation has become impossible to fulfill and cannot be amended under Article 15, or if any of the circumstances described in Article 6.6 apply, the European Registration Authority may, after having heard the governing board of the foundation, propose to the court the dissolution of the foundation.

9. Nothing in this Article shall empower the European Registration Authority to act in the administration of a foundation.

Article 15 Change of purpose

1. Any change to the purpose proposed by the governing board shall require the agreement of the European Registration Authority.

2. Any amendment of the bylaws, insofar as they affect the purpose of the EF, should be consistent with the will of the founder.

3. The purpose of the EF may only be changed if the current purpose has been achieved or cannot be achieved or where the current purposes have ceased to provide a suitable and effective method of using the foundation's assets.

Article 16 Dissolution

1. The governing board of the foundation may decide upon dissolution of the EF only if the aim of the EF has been achieved or cannot be achieved; the time for which it was set up has expired; or the total loss of assets has taken place. The dissolution proposed by the governing board shall require the agreement of the European Registration Authority.

2. Upon dissolution under section 1 above or, with the court's agreement, under Article 14.8, and once the creditors have been paid in full, any remaining assets of the EF shall be used for public benefit purposes as near as possible to those for which the EF was created.

Article 17 Conversion into a public benefit purpose foundation under Member State law

1. An EF may be converted into a foundation governed by the law of the Member State in which it has its registered office. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.

2. The board of the EF must decide on the conversion to a foundation and the new statutes. The conversion shall not result in the winding up of the organisation or in the creation of a new legal person.

3. The conversion must be permissible under the statutes of the EF.

4. A detailed request for conversion (Draft Terms of Conversion) including:

i. name and registered office of the converting EF

ii. the statutes of the new public benefit foundation must be handed over to the competent foundation authority in the Member State, where

the public benefit organisation should be registered or should have its main office. The request for conversion must follow the requirements imposed by the Member State. The competent foundation authority will then forward the approved request for conversion to the European Registration Authority.

5. The European Registration Authority shall remove from the EF register the converted foundation as an EF, once it has ensured that the conversion has been approved according to national law and employee involvement are taken into account. Only then the conversion will take effect. This decision must be published in the European Official Journal.

Article 18 Appeal to the courts

All decisions of the European Registration Authority shall be appealable to the courts.

Final Provisions: Effective application

Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

Review of Regulation

Five years after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate.

Entry into force

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Union. It shall apply from date (…) This regulation shall be binding and directly applicable in all Member States.

21. Fundamental Principles on the Status of Non-Governmental Organisations in Europe

21.1. Fundamental Principles on the Status of Non-governmental Organisations in Europe

The Fundamental Principles on the Status of Non-governmental Organisations in Europe[412]

The participants at the multilateral meetings held in Strasbourg from 19 to 20 November 2001, 20 to 22 March 2002 and 5 July 2002,

Having regard to Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms which provides that "everyone has the right to freedom of peaceful assembly and to freedom of association with others";

Having regard to the European Convention on the Recognition of the Legal Personality of International Non-governmental Organisations (ETS No. 124) and to the desirability of enlarging the number of its contracting parties;

Considering that non-governmental organisations (hereinafter NGOs) make an essential contribution to the development, realisation and continued survival of democratic societies, in particular through the promotion of public awareness and the participatory involvement of citizens in the res publica, and that they make an equally important contribution to the cultural life and social well-being of such societies;

Considering that NGOs make an invaluable contribution to the achievement of the aims and principles of the United Nations Charter and of the Statute of the Council of Europe;

Considering that their contributions are made through an extremely diverse body of activities which can range from acting as a vehicle for communication between different segments of society and public authorities, through the advocacy of change in law and public policy, the provision of assistance to those in need, the elaboration of technical and professional standards, the monitoring of compliance with existing obligations under national and international law, and on to the provision of a

[412] http://www.coe.int/T/E/Legal%5Faffairs/Legal%5Fco%2Doperation/Civil%5Fsociety/FP%20version%20finale%20E.asp#TopOfPage, 22 February 2005.

means of personal fulfilment and of pursuing, promoting and defending interests shared with others;

Considering that the existence of many NGOs is a manifestation of the right of their members to freedom of association and of their host country's adherence to principles of democratic pluralism;

Recognising that the operation of NGOs entails responsibilities as well as rights,

Have adopted the present Fundamental Principles on the Status of Non-governmental Organisations in Europe.

Scope

1. NGOs are essentially voluntary self-governing bodies and are not therefore subject to direction by public authorities. The terms used to describe them in national law may vary, but they include associations, charities, foundations, funds, non-profit corporations, societies and trusts. They do not include bodies which act as political parties.

2. NGOs encompass bodies established by individual persons (natural and legal) and groups of such persons. They may be national or international in their composition and sphere of operation.

3. NGOs are usually organisations which have a membership but this is not necessarily the case;

4. NGOs do not have the primary aim of making a profit. They do not distribute profits arising from their activities to their members or founders, but use them for the pursuit of their objectives.

5. NGOs can be either informal bodies or organisations which have legal personality. They may enjoy different statuses under national law in order to reflect differences in the financial or other benefits which they are accorded in addition to legal personality.

Basic principles

6. NGOs come into being through the initiative of individuals or groups of persons. The national legal and fiscal framework applicable to them should therefore permit and encourage this initiative.

7. All NGOs enjoy the right to freedom of expression.

8. NGOs with legal personality should have the same capacities as are generally enjoyed by other legal persons and be subject to the same administrative, civil and criminal law obligations and sanctions generally applicable to them.

9. Any act or omission by a governmental organ affecting an NGO should be subject to administrative review and be open to challenge in an independent and impartial court with full jurisdiction.

Objectives

10. An NGO is free to pursue its objectives, provided that both the objectives and the means employed are lawful. These can, for instance, include research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with stated government policy.

11. An NGO may also be established to pursue, as an objective, a change in the law.

12. An NGO which supports a particular candidate or party in an election should be transparent in declaring its motivation. Any such support should also be subject to legislation on the funding of political parties. Involvement in political activities may be a relevant consideration in any decision to grant it financial or other benefits in addition to legal personality.

13. An NGO with legal personality may engage in any lawful economic, business or commercial

activities in order to support its non-profit-making activities without there being any need for special authorisation, but always subject to any licensing or regulatory requirements applicable to the activities concerned.

14. NGOs may pursue their objectives through membership of federations and confederations of NGOs.

Establishment

15. Any person, be it legal or natural, national or foreign national, or group of such persons, should be free to establish an NGO.

16. Two or more persons should be able to establish a membership-based NGO. A higher number may be required where legal personality is to be acquired, but this number should not be set at a level that discourages the establishment of an NGO.

17. Any person should be able to establish an NGO by way of a gift or bequest, the normal outcome of which is the creation of a foundation, fund or trust.

Content of statutes

18. Every NGO with legal personality should have statutes. The "statutes" of the NGO shall mean the constitutive instrument or instrument of incorporation and, where they are the subject of a separate document, the statutes of the NGO. These statutes generally specify:

– its name;

– its objectives;

– its powers;

– the highest governing body;

– the frequency of meetings of this body;

– the procedure by which such meetings are to be convened;

– the way in which this body is to approve financial and other reports;

– the freedom of this body to determine the administrative structure of the organisation;

– the procedure for changing the statutes and dissolving the organisation or merging it with another NGO.

19. In the case of a membership-based NGO, the highest governing body is constituted by the members. The agreement of this body, in accordance with the procedure laid down by law and the statutes, should be required for any change in the statutes. For other NGOs the highest governing body is the one specified in the statutes.

Membership

20. Membership of an NGO, where this is possible, must be voluntary and no person should therefore be required to join any NGO other than in the case of bodies established by law to regulate a profession in states which treat them as NGOs.

21. National law should not unjustifiably restrict the ability of any person, natural or legal, to join membership-based NGOs. The ability of someone to join a particular NGO should be determined primarily by its statutes, and should not be influenced by any unjustified discrimination.

22. Members of an NGO should be protected from expulsion contrary to its statutes.

23. Persons belonging to an NGO should not be subject to any sanction because of their membership. However, membership of an NGO may be incompatible with a person's position or employment.

Legal personality

24. Where an NGO has legal personality this should be clearly distinct from that of its members or of its founders who should, in principle, not therefore be personally liable for any debts and obligations that the NGO has incurred or undertaken.

25. The legal personality of an NGO should only be terminated pursuant to the voluntary act of its members – or, in the case of a non-membership NGO, its management – in the event of bankruptcy, prolonged inactivity or misconduct. An NGO created through the merger of two or more NGOs should succeed to their rights and liabilities.

Acquisition of legal personality

26. Where legal personality is not an automatic consequence of the establishment of an NGO, the rules governing the acquisition of such personality should be objectively framed and not subject to the exercise of discretion by the relevant authority.

27. National laws may disqualify persons from forming an NGO with legal personality for reasons such as a criminal conviction or bankruptcy.

28. The rules for acquiring legal personality should be published together with a guide to the process involved. This process should be easy to understand, inexpensive and expeditious. In particular, an NGO should only be required to file its statutes and to identify its founders, directors, officers and legal representative and the location of its headquarters. A foundation, fund or trust may be required to prove that it has the financial means to accomplish its objectives.

29. A membership-based NGO should only seek legal personality after a resolution approving this step has been passed by a meeting which all its members have been invited to attend, and it may be required to produce evidence of this.

30. Any fees that may be charged for an application for legal personality should not be set at a level that discourages applications.

31. Legal personality should only be refused where there has been a failure to submit all the clearly prescribed documents required, if a name has been used that is patently misleading or is not adequately distinguishable from that of an existing natural or legal person in the country concerned, or if there is an objective in the statutes which is clearly incompatible with the law.

32. Any evaluation of the acceptability of the objectives of an NGO when it seeks legal personality should be well informed and respectful of the notion of political pluralism and must not be driven by prejudices.

33. The body responsible for granting legal personality need not be a court, but it should preferably be independent of control by the executive branch of government. Consistency in decision-making should be ensured, and all decisions should be subject to appeal.

34. The body concerned should have sufficient, appropriately qualified staff for the performance of its functions and it should ensure that appropriate guidance or assistance for an NGO seeking legal personality is available.

35. There should be a prescribed time-limit for taking a decision to grant or refuse legal personality. All decisions should be communicated to the applicant and any refusal should include written reasons.

36. Decisions on qualification for financial or other benefits to be accorded to an NGO should be taken separately from those concerned with its acquisition of legal personality and preferably by a different body.

37. Without prejudice to the applicability of the articles laid down in the European Convention on the Recognition of the Legal Personality of International Non-governmental Organisations for those states that have ratified that convention, foreign NGOs may be required to obtain approval to operate in the host country, but they should not have to establish a new and separate entity for this purpose. This would not preclude a requirement that a new and separate entity be formed where an NGO transfers its seat from one state to another.

38. The activities of NGOs at the international level should be facilitated by ratification of the

European Convention on the Recognition of the Legal Personality of International Non-governmental Organisations.

39. Where the acquisition of legal personality is not an automatic consequence of the establishment of an NGO, it is desirable for the public to have access to a single, national registry of all NGOs with such personality.

40. An NGO whose statutes allow it to establish or accredit branches should not require any other authorisation for this purpose.

41. An NGO should not be required to renew its legal personality on a periodic basis.

42. A change in the statutes of an NGO with legal personality should require approval by a public authority only where its name or its objectives are affected. The granting of such approval should be governed by the same process as that for the initial acquisition of such personality. However, such a change should not entail an NGO being required to establish itself as a new entity.

Management

43. In a membership-based NGO, the persons responsible for its management should be elected or designated by the members or by an organ statutorily delegated this task.

44. The management of a non-membership-based NGO should be determined in accordance with its statutes.

45. The bodies for management and decision-making of NGOs should be in accordance with their statutes and the law, but NGOs are otherwise sovereign in determining the arrangements for pursuing their objectives. In particular, the appointment, election or replacement of officers, and the admission or exclusion of members are a matter for the NGO concerned.

46. The structures for management and decision-making should be sensitive to the different interests of members, users, beneficiaries, boards, supervisory authorities, staff and founders. Public bodies providing NGOs with financial and other benefits also have a legitimate interest in their performance.

47. Changes in an NGO's internal structure or rules should not require authorisation by a public authority. No external intervention in the running of NGOs should take place until and unless a breach of the administrative, civil or criminal law, insurance obligations, fiscal or similar regulations occurs or is thought imminent. This does not preclude the law requiring particular supervision of foundations and other institutions.

48. An NGO should observe all applicable employment standards and insurance obligations in the treatment of its staff.

49. NGOs should not be subject to any specific limitation on foreign nationals being on their board or staff.

Property and fund-raising

50. NGOs may solicit and receive funding – cash or in-kind donations – from another country, multilateral agencies or an institutional or individual donor, subject to generally applicable foreign exchange and customs laws.

51. NGOs with legal personality should have access to banking facilities.

52. NGOs with legal personality should be able to sue for redress of harm caused to their property.

53. In order to ensure the proper management of their assets, NGOs should preferably act on independent advice when selling or acquiring any land, premises or other major assets.

54. Property acquired by an NGO on a tax-exempt basis should not be used for a non-exempt purpose.

55. An NGO may designate a successor to receive its assets, in the event of its termination, but only after its liabilities have been cleared and any rights of donors to repayment have been honoured. Such a successor should normally be an NGO with compatible objectives, but the state should be the successor where either the objectives, or the activities and means used by the NGO to achieve those objectives, are found to be unlawful. In the former case, and in the event of no successor being designated, the property should be transferred to another NGO or legal person that conforms most with its objectives or should be applied towards them by the state.

56. The funds of an NGO can be used to pay its staff. All staff and volunteers acting on behalf of an NGO can also be reimbursed for reasonable expenses which they have thereby incurred.

Public support

57. There should be clear, objective standards for any eligibility of NGOs for any form of public support, such as cash and exemption from income and other taxes or duties on membership fees, funds and goods received from donors or governmental and international agencies, income from investments, rent, royalties, economic activities and property transactions, as well as incentives for donations through income tax deductions or credits.

58. In granting such support, relevant considerations may be the nature of activity that the NGO undertakes and whether or not it exists for the benefit of its membership or for the benefit of the public (or a section of this). Such support may also be contingent on an NGO having a particular status and be linked to specific requirements for financial reporting and disclosure.

59. A material change in the statutes or activities of an NGO may lead to the alteration or termination of public support.

Transparency and accountability

60. NGOs should submit an annual report to their members or directors on their accounts and activities. These reports can also be required to be submitted to a designated supervising body where any taxation privileges or other public support has been granted to the NGOs concerned.

61. NGOs should make a sufficiently detailed report to any donors who so request, on use made of donations to demonstrate the fulfilment of any condition which was attached to them.

62. Relevant books, records and activities of NGOs may, where specified by law or by contract, be subject to inspection by a supervising agency. NGOs can also be required to make known the percentage of their funds used for fundraising purposes.

63. All reporting and inspection shall be subject to a duty to respect the legitimate privacy of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality.

64. NGOs should generally have their accounts audited by an institution or person independent of their management.

65. Foreign NGOs should be subject to these reporting and inspection requirements only in respect of their activities in the host country.

Supervision

66. NGOs may be regulated in order to secure the rights of others, including members and other NGOs, but they should enjoy the benefit of the presumption that any activity is lawful in the absence of contrary evidence.

67. NGOs should not be subject to any power to search their premises and seize documents and other material there without objective grounds for taking such measures and prior judicial authorisation.

68. Administrative, civil and/or criminal proceedings may be an appropriate response where there are reasonable grounds to believe that an NGO with legal personality has not observed the requirements concerning acquisition of such personality.

69. NGOs should generally be able to request suspension of administrative action requiring that they stop particular activities. A refusal of the request of suspension should be subject to prompt judicial challenge.

70. In most instances the appropriate sanction against an NGO will merely be the requirement to rectify its affairs and/or the imposition of an administrative, civil or criminal penalty on it and/or any individuals directly responsible. Penalties shall be based on the law in force and observe the principle of proportionality.

71. In exceptional circumstances and only with compelling evidence, the conduct of an NGO may warrant its dissolution.

Liability

72. The officers, directors and staff of an NGO with legal personality should not in principle be personally liable for its debts, liabilities and obligations.

73. The officers, directors and staff of an NGO with legal personality may be liable to it and third parties for misconduct or neglect of duties.

Relations with governmental bodies

74. NGOs should be encouraged to participate in governmental and quasi-governmental mechanisms for dialogue, consultation and exchange, with the objective of searching for solutions to society's needs.

75. Such participation should not guarantee nor preclude government subsidies, contracts or donations to individual NGOs or groups thereof.

76. Consultation should not be seen by governments as a vehicle to co-opt NGOs into accepting their priorities nor by NGOs as an inducement to abandon or compromise their goals and principles.

77. Governmental bodies can work with NGOs to achieve public policy objectives, but should not attempt to take them over or make them work under their control.

78. NGOs should also be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.

21.2. Explanatory memorandum to the Fundamental Principles

Explanatory memorandum to the Fundamental Principles on the Status of Non-governmental Organisations in Europe

Introduction

1. Freedom of association, as declared in Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, is a right recognised by all member states of the Council of Europe.

2. In the majority of member states this freedom is reflected in a flourishing voluntary sector; the number of associations registered in the countries concerned is estimated at 2 to 3 million,1 and this figure does not take account of unofficial, unregistered associations, of which there are many in certain countries. The number of non-governmental organisations (hereinafter NGOs) is therefore increasing, and this trend is inextricably linked to the ideal of freedom and democracy which guides the Council of Europe and its member states.

3. However, freedom of association is effective only where it goes hand-in-hand with legislative measures facilitating its exercise and respecting the value of NGOs' contribution to society. Although they can be fostered by passing favourable legislation, awareness of and respect for NGOs' contribution develop only where NGOs

themselves undertake to behave in a responsible, efficient and ethical manner.

4. It is for these reasons that the Fundamental Principles on the Status of Non-governmental Organisations in Europe have been drawn up. The aim is not to offer model legislation concerning NGOs but to recommend the implementation of a number of principles which should shape relevant legislation and practice in a democratic society founded on the rule of law.

5. The European Convention on the Recognition of the Legal Personality of International Non-governmental Organisations2 (ETS No. 124) deals with existing NGOs which already have legal personality in the state where they are headquartered and wish to have this legal personality recognised by other states in which they intend to carry out some of their activities. On the other hand, the fundamental principles seek to promote national legislation which assists the setting up of NGOs and which, among other things, lays down arrangements for the acquisition of legal personality in the NGO's state of origin, regardless of whether the NGO's work is to be purely national or international as well. National law should provide NGOs with a flexible legal framework, enabling them to meet the recommendations contained in the fundamental principles. All legislation on NGOs should be devised in consultation with representatives of the NGO sector.

Background

6. The Fundamental Principles on the Status of Non-governmental Organisations in Europe are the result of discussions initiated as early as 1996. They began with a series of multilateral meetings and regional conferences held from 1996 to 1998,3 which resulted in the adoption of "Guidelines to promote the development and strengthening of NGOs in Europe", constituting the conclusions of a multilateral meeting on the legal status of NGOs and their role in a pluralist democracy. It was these guidelines that laid the foundations for the fundamental principles.

7. An expert, Professor Jeremy McBride, was commissioned to prepare a preliminary draft of the Fundamental Principles on the Status of Non-governmental Organisations in Europe. This draft text was discussed at three open meetings held in Strasbourg on 19 and 20 November 2001, from 20 to 22 March 2002 and on 5 July 2002.

Preamble

8. The preamble to the Fundamental Principles on the Status of Non-governmental Organisations in Europe stresses the importance and value of NGOs' contribution to a democratic society, which is made in fields as varied as promotion of human rights, environmental protection, sport, public health and defence of the interests of various sectors of the community. The text lays particular emphasis on NGOs' role in public awareness-raising and education for democracy, while pointing out that these aims, albeit essential in a society adhering to the values of democracy and the rule of law, are not the sole purposes fulfilled by NGOs. The nature of NGOs' input in the different fields is equally varied.

9. The preamble emphasises that, through the many different activities they pursue and the ensuing benefits, NGOs contribute to the achievement of the aims and principles set out in the Statute of the Council of Europe and the Charter of the United Nations. As far as the Council of Europe is concerned, this contribution is made through a variety of means, such as education, training, dissemination of Council of Europe standards, participation in expert committees, and especially through the consultative status that some 370 NGOs have acquired with the Organisation.

10. Member states of the Council of Europe undertake to promote the rule of law and protection of the fundamental freedoms which are the foundation of genuine democracy, in particular freedom of opinion, expression and association.

11. Laws enabling NGOs to acquire legal personality play a vital role in giving effect to freedom of association, guaranteed by the European Convention on Human Rights and safeguarded by international and constitutional law. Furthermore, freedom of expression, which is also guaranteed by the European Convention on Human Rights and safeguarded by international and constitutional law, is meaningful only where it is enforced through laws permitting the establishment of associations. This is why the preamble states that the vitality of civil society in a given country is a good indication of that country's adherence to principles of democratic pluralism, in particular freedom of association.

12. Lastly, the preamble points out that, under the text, NGOs have not only rights, but also certain duties and responsibilities.

Scope

13. There is no general definition of an NGO in international law and the term covers an extremely varied range of bodies within the member states. Reference should be to the different practices followed in each state, notably concerning the form that an NGO should adopt in order to be granted legal personality or receive various kinds of advantageous treatments. Some types of NGOs, trusts, for example, exist only in certain states. NGOs' sphere of action also varies considerably, since they include both small local bodies with only a few members, for example a village chess club, and international associations known worldwide, for example certain organisations engaged in the defence and promotion of human rights.

14. Among these NGOs the text gives examples of certain forms, but the list is not exhaustive. This list does not include trade unions and religious congregations, but these certainly have a special place among NGOs. In some countries these bodies, or some of them, come within the ambit of legislation on associations, whereas in others they are covered by separate laws. Since Convention No. 124 did not expressly exclude these bodies from its scope, the participants decided to make no explicit mention of trade unions and religious congregations in the fundamental principles.

15. Political parties are expressly excluded from the ambit of the fundamental principles as, under most national laws, they are the subject of separate provisions from those applicable to NGOs in general.

16. Professional bodies, established by law, to which members of a profession are required to belong for regulatory purposes, are also not included in the fundamental principles' definition of NGOs. However, as is recognised in paragraph 20, national law may treat them as NGOs and some aspects of their activity can be essentially the same as those carried out by voluntary bodies, for example, the human rights committee of a bar association.

17. As indicated in paragraph 4 of the fundamental principles, the main character of NGOs is the fact that profit-making is not their primary aim. All NGOs have in common their self-governing, voluntary nature and the fact that they do not distribute profits from their activities to their members but use these for the pursuit of their objectives.

18. Apart from these common features, the distinction most frequently drawn in the case of NGOs is that between associations and foundations. As stated in the explanatory report on Convention No. 124, an association means "a number of persons uniting together for some specific purpose". According to the same source, a foundation is "an identified property devoted to a given purpose".

19. Another distinction of some importance is that addressed in paragraph 5, the distinction between informal NGOs, that is those not wishing to acquire legal personality, and NGOs with legal personality. As is the case with most national laws, the text contains a number of provisions aimed solely at NGOs with legal personality. However, the text acknowledges the principle that an NGO may wish to pursue its activities without having legal personality to that end, and it is important that national law should do likewise. Furthermore, in some countries, the distinction between NGOs with legal personality and those without does not exist, as NGOs automatically acquire legal personality upon their establishment. Therefore, not all aspects of the fundamental principles are applicable to them.

Basic principles

20. The fundamental principles lay down four basic principles, which are then fleshed out in the subsequent sections:

21. Voluntary establishment: the starting point for any law on NGOs should be the right of any natural or legal person to establish an NGO with a lawful, non-profit-making objective. This should be an act of free will. It is important that national laws on NGOs, and also rules on their taxation, allow and encourage such initiatives.

22. Right to freedom of expression: this principle derives from Article 10 of the European

Convention on Human Rights, which provides that "Everyone has the right to freedom of expression", and is applicable to NGOs on an equal footing with other natural or legal persons.

23. NGOs with legal personality should have the same general rights and obligations as other legal entities: the purpose of this principle is to reaffirm that NGOs must be subject to ordinary domestic law, not special regulations, although separate legislation may grant them additional rights and measures may be taken to encourage their activities.

24. Judicial protection: in a state governed by the rule of law it is essential that NGOs should be entitled, in the same way as other legal entities, to challenge decisions affecting them in an independent court which has the capacity to review all aspects of their legality, to quash them where appropriate and to provide any consequential relief that might be required. The principle established in the previous paragraph holds good, that is any act or decision affecting an NGO must be subject to the same administrative and judicial supervision as is generally applicable in the case of other legal entities. There should be no need for special provisions to this effect in legislation on NGOs.

Objectives

25. The range of objectives that may be pursued by NGOs is commensurate with their own diversity, and the objectives mentioned in the fundamental principles are merely examples. The only requirement here – other than that an NGO should be non-profit-making – is that set out in paragraph 10: lawfulness of the objectives pursued and the means employed. The fundamental principles illustrate a range of the means that might be employed, but these are not exhaustive.

26. Two objectives, namely seeking a change in the law and participating in political debate, are particularly mentioned because limitations on their pursuit have been the subject of successful challenges in the European Court of Human Rights.

27. Pursuit of economic activities is a special case, since it is in fact NGOs' non-profit-making nature that distinguishes them from commercial enterprises. In this connection, the text lays down the principle that an NGO is free to carry on any economic, business or commercial activity, on condition that any profits are used to finance the pursuit of the common- or public-interest objectives for which the NGO was set up. National legislation governing NGOs should therefore stipulate that none of their earnings or net profits is to be distributed, as such, to any person whatsoever. Such legislation might also prescribe particular modalities for carrying out economic or commercial activities, for example, the formation of a subsidiary company. Subject to this general restriction, no requirements should be imposed on NGOs other than the general rules governing the economic activities in question.

28. The fundamental principles also establish the principle that, in pursuit of their objectives, NGOs are free to join or not to join federations and confederations of NGOs. Such federations and confederations of NGOs have an important role, since they foster complementarity among NGOs and allow them to reach a wider audience, as well as share services and set common standards.

Establishment

29. Paragraph 15 of the fundamental principles reiterates, and develops, the principle that any person or group of persons should be free to establish an NGO, already mentioned in the section on basic principles. Two kinds of restriction are encountered in practice in some states: firstly, on the establishment of NGOs by foreign nationals and, secondly, on establishment by legal entities. There are no grounds for these restrictions.

30. The question of the minimum number of people needed to establish an NGO was discussed at length during the preparatory work, since this number varies under national law. In some states one person is enough, whereas in others the law sets a higher threshold, which may be two, three or five people, or even more. In the end, the participants decided to draw a distinction between informal organisations and those wishing to acquire legal personality. In the first case, two people should suffice to establish a membership-based NGO, whereas a greater minimum number of members may be required before legal personality can be granted. In that event, the figure should not be so large as to discourage the actual establishment.

31. Paragraph 17 of the text deals with foundations, funds and trusts, which are the normal forms taken by NGOs established by means of a donation or bequest.

Content of statutes

32. As regards their organisation and decision-making processes, NGOs, in particular those with legal personality, must heed the needs of various parties: members, users, beneficiaries, their highest governing body, their staff, donors and, in certain circumstances, national or local administrative authorities. They must therefore have clear statutes, setting out the conditions under which they operate and which should be available for consultation by the above-mentioned parties, with a view to ensuring legal certainty. Paragraph 18 of the text lists several examples. They illustrate the type of information of general usefulness which the statutes should contain.

33. Subject to generally applicable administrative, civil and criminal law, the conditions under which an NGO operates, as set out in their statutes, are entirely a matter for the NGO itself, in the persons of its members. A decision to amend the statutes accordingly lies with the NGO's highest governing body, consisting of its entire membership, so as to ensure that the proposed amendment commands sufficient support among members.

Membership

34. Membership is a particularly important issue, as it is related to the concepts of liability and legal capacity. The section of the fundamental principles dealing with this subject first reiterates the fundamental requirement that membership of an NGO must generally be voluntary. This negative aspect of freedom of association is, however, something that can be relaxed in the case of professional organisations to which members of a given profession – such as doctors or lawyers – must belong under the regulations in force, for those countries which treat them as NGOs.

35. Apart from its voluntary nature, membership is governed by two important principles: firstly, anyone should be able to join an NGO without being subject to unjustifiable restrictions imposed by law; secondly, questions relating to membership are a matter for the NGO's statutes.

36. Thus, the statutes may provide for restrictions, such as confining membership of a club for senior citizens to persons belonging to that age group. Furthermore, in some cases membership of an NGO may be incompatible with a person's office or employment, particularly where these are public. In addition, there may be a need to adopt restrictions to protect vulnerable persons, but any restriction on the ability of children to join an NGO should take into account the freedom of association guaranteed to them both by Article 11 of the European Convention on Human Rights and Article 15 of the Convention on the Rights of the Child. However, subject to these provisos, it should be lawful within a state's jurisdiction for any person, whether natural or legal, national or foreign national, to join an NGO.

37. In the same way as an NGO's statutes determine a person's capacity to become a member, it is for the statutes to deal with the question of expulsion of members and to determine the procedure to be followed in that case.

Legal personality

38. The provisions relating to the legal personality of NGOs are one of the cornerstones of their status, since they permit NGOs to have an existence in their own right, separate from those of their members or founders. This enables them to enjoy elementary civic rights, such as the initiation of legal proceedings, but also to engage in practical dealings essential for their operation, for example rental of premises or opening of a bank account. It is important to note that paragraphs 24 and 25 of the fundamental principles are to be read together with paragraphs 72 and 73 on liability.

39. Some of the provisions contained in the fundamental principles specifically concern NGOs with legal personality. However, it must not be overlooked that some NGOs may well wish to pursue their objectives without acquiring legal personality to that end, and national law should allow them this possibility without being based on the assumption that legal personality is mandatory for all NGOs.

Acquisition of legal personality

40. The moment at which an NGO acquires legal personality varies depending on the state concerned: in some states NGOs automatically have legal personality from their establishment, and this section therefore does not apply. In the majority of states, acquisition of legal personality is governed by rules and a procedure. The text stipulates that these should have an objective basis and that their application should not result in arbitrary treatment of NGOs.

41. Although the moment of acquisition of legal personality varies from one state to another, the same does not apply to its termination, since the rule is that an NGO's legal personality ends with its dissolution – voluntary or involuntary – in case of bankruptcy, prolonged inactivity – which might arise from insufficient membership – or as an exceptional sanction. It also comes to an end with the merger of two or more NGOs; the resulting new entity assumes the rights and obligations of the NGOs that have merged.

42. The section of the fundamental principles concerned with acquisition of legal personality establishes certain basic principles that should govern this procedure – referred to in some states as the registration procedure – where this personality is not automatically acquired through the establishment of the NGO concerned. The underlying logic is that the procedure must be as simple and undemanding as possible and must not entail the exercise of discretion.

43. For that reason the applicable rules must be clear and easily accessible by NGOs, which is not always the case among states. One means of guaranteeing such accessibility is publication of an explanatory guide to the process by the relevant authority. This may not be possible in all states for budgetary reasons, but in any event the registration authority should provide NGOs with all the information and assistance they may need.

44. It is entirely legitimate for states to make the acquisition of legal personality by an NGO subject to the supply of certain information and documents. In an effort to ensure legal certainty, this information should above all make it possible to answer enquiries from third parties about the NGO's identity, address and management structures. Any individual having a business relationship with an NGO, for instance in the event of sale of property or recruitment of staff, must be able to ascertain whether the organisation in question is recognised as a legal person. Similarly, for their own protection, private individuals should be able to check that a body presenting itself as an NGO and seeking their support is in fact what it claims to be.

45. The registration procedure should not constitute an opportunity for states to request information to which they have no entitlement. The latter would generally include the identity of donors or an NGO's financial circumstances, but there may be a need to require disclosure of those circumstances where a body such as a foundation is established. The procedure should also not provide states with an excuse for discriminating between NGOs as to whether their objectives or members are deemed "acceptable", in so far as the objectives and the means employed are lawful.

46. A state may charge a fee to cover the cost of processing applications, but this should not be set at a dissuasive amount.

47. The text establishes the principle that the authority deciding an application for legal personality should be separate from that awarding any form of public support. As a general rule, legal personality will be granted by an administrative authority, but in some countries it may be appropriate for the courts to fulfil this function.

48. So as to limit the scope for the exercise of discretion by the authorities deciding an application for legal personality, the fundamental principles list the grounds on which an NGO's application may be refused. However, the list set out in paragraph 31 of the fundamental principles is not exhaustive. States may lay down additional grounds for refusal in their legislation, though such grounds should be based on clear and objective considerations. In accordance with the principles governing decision-making by administrative authorities, it also specifies that there should be a prescribed time-limit for deciding an application. The decision must be final, and it is not acceptable that legal personality granted to an NGO should be subject to periodic review. However, this does not prevent states from re-examining the question of legal personality where a substantial change is made to the the statutes or activities of the NGO. The grounds for the decision must be indicated in writing, particularly where it is a refusal, so as to allow the NGO to challenge it in the relevant administrative authority and in court. Failure to

decide within the prescribed time limit should be treated as either a refusal of, or the granting of, legal personality.

49. In the states which have ratified Convention No. 124, the legal personality and capacity acquired by an NGO in one contracting party where it has its registered headquarters should be recognised, as of right, by the other contracting parties, subject to compliance with certain conditions. In other states, foreign NGOs may be required to obtain approval to operate in the host country.

50. Information supplied by NGOs when applying for legal personality should be kept on record in a centralised national register, which, as stated in the text, should be accessible to the public. However, this rule on centralisation of information cannot be made generally applicable, as account should be taken of the particularities of federal states, where registration may be carried out at the level of the entities of the federation.

51. The rule laid down in paragraph 42 of the fundamental principles is intended to ensure that the statutes of an NGO can be amended under a simple, expedited procedure. Approval should only be needed in the case of significant matters, such as the name or objectives of an NGO. The procedure should not normally entail an obligation to re-establish the organisation as a whole, thus allowing the NGO to evolve, while maintaining some continuity.

Management

52. As regards their organisation and decision-making processes, NGOs must heed the needs of various parties, both internal and external, as pointed out in paragraph 46. It is therefore in the interests of all concerned that NGOs should have clear statutes, as it is this document which defines the organisation's structure and operating rules.

53. The statutes should comply with the legislation in force, and it is also desirable that it be compatible with any commitments entered into by the NGO vis-à-vis donors or a network of NGOs to which it belongs.

54. The NGO's organisation and decision-making processes and determination of levels of responsibility and accountability must be consistent with its statutes, but should not be subject to the supervision of any outside authority, except for the requirement of compliance with the law, as mentioned above.

55. This means that an NGO is sovereign in determining the internal organisation it wishes to adopt in pursuit of its objectives, as defined in the statutes. As long as it does not break the law, external legal bodies should have no say in the conduct of its internal affairs. An exception is made here for those provisions governing certain types of NGOs which require special supervision. All NGOs must, however, observe all relevant applicable employment and social security law and they enjoy no exemption from any requirements as regards the membership of their component bodies or with respect to immigration law. In particular, foreign nationals on the board or staff of NGOs are subject to the laws of the host country with respect to their entry, sojourn and departure.

Property and fund-raising

56. The possibility for NGOs to solicit donations in cash or in kind is a fundamental principle, a national consequence of their non-profit-making nature. Such contributions, along with the proceeds of any economic activity, are NGO's vital means of financing the pursuit of its objectives. However, this possibility for NGOs to collect funding is not absolute and may be subjet to regulation, with a view to the protection of the targeted audience.

57. Donors may be natural or legal persons – companies or institutions – and may be national or foreign. In general, foreign and national funding should be subject to the same rules, in particular as regards the possible uses of the funds and reporting requirements.

58. The provisions of paragraphs 51, 52, 53 and 55 are designed to safeguard the assets of NGOs and ensure that they are properly managed.

59. The principle set out in paragraph 51 does not imply that banks are under an obligation to provide banking facilities to every NGO requesting it. Subject to the principle of non-discrimination, individual banks are free to choose their clients.

60. The law should permit an NGO to designate, in its statutes or by resolution, another compatible body to receive its assets, after clearing of its liabilities, in the event of its dissolution. This is a principle of good practice, which should be encouraged. In some cases contractual clauses, in particular concerning major donors, may require the return of funds to a donor in the event of the NGO's dissolution. The successor may also be the state, particularly where no compatible body exists or where the NGO's objectives or activities have been found to be unlawful. However, this should not give rise to a financial windfall for the state.

61. Paragraph 56 sets out the principle according to which it is perfectly appropriate for an NGO to use its funds for paying its staff and reimbursing staff and volunteers for the costs incurred while

acting on its behalf, even if the funds used were obtained by means of public support.

Public support

62. NGOs are sometimes better placed than the state to answer certain needs of society, for instance in welfare and health matters. As a result, states often decide to grant them support, in the form of direct grants or preferential tax treatment.

63. The eligibility for public support should be based on clear, objective criteria. The public should also be able to ascertain which NGOs have received support and on what grounds. The authorities must also be able to verify that associations seeking support or preferential tax treatment do, indeed, serve a non-profit-making purpose, as in some countries tax advantages attract certain entities to apply for NGO status when it would have been more appropriate for them to have been established as commercial companies.

64. As a result, the majority of states make the granting of public support contingent on compliance with certain criteria and, above all, with the NGO's fulfilment of a public interest objective. In some states this may entail recognition of a special status or classification as an organisation in the public interest, which enables the NGO to receive donations and enjoy tax advantages, while at the same time ensuring the protection of third parties.

65. Since the granting of public support is to a large extent conditional on the objectives and activities of an NGO, it is normal that any major change in those activities or objectives may result in review, alteration and even termination, of public support.

Transparency and accountability

66. As regards its activities and financial position, an NGO is accountable to a number of parties, first and foremost its members. It is thus good practice that it should submit an annual report on its accounts and activities to them. Secondly, an NGO which has benefited from public support or preferential tax treatment can be expected to account to the community concerning the use made of public funds. Lastly, donors may stipulate by contract that an NGO is required to report on the use made of individual donations.

67. However, reporting requirements must be tempered by other obligations relating to the respect for privacy and confidentiality. In particular, a donor's desire to remain anonymous must be observed. The respect for privacy and confidentiality is, however, not unlimited. In exceptional cases, the general interest may justify authorities' having access to private or confidential information, for instance in order to combat black market money transfers. Any exception to business confidentiality or to the privacy and confidentiality of donors, beneficiaries and staff shall observe the principle of necessity and proportionality.

68. In order to guarantee objectivity, the fundamental principles lay down the principle that NGOs should have their accounts audited by a person independent of its management, although this person could still be a member of the NGO in question. As tends to happen with small commercial companies, small NGOs may be exempted from the obligation of having their accounts audited by an independent person.

Supervision

69. Whereas the previous section concerned oversight of an NGO's accounts and performance, in relation to the objectives defined in its statutes, this section deals with supervision of compliance with the civil, criminal and administrative law in force.

70. The best means of ensuring ethical, responsible conduct by NGOs is to promote self-regulation in this sector at national and international levels. Responsible NGOs are increasingly conscious of the fact that the sector's success depends to a large extent on public opinion concerning their efficiency and ethics. Furthermore, in some countries codes of conduct are often drawn up to enable groups of NGOs in a given sector to ensure that the sector's needs and challenges are met and widely understood.

71. States nevertheless have a legitimate interest in regulating NGOs so as to guarantee respect for the rights of third parties, and this may include action to safeguard the reputation and economic interests of other NGOs in particular. State intervention may also be needed to protect members against abuse of an NGO's dominant position, particularly against exclusion in breach of the organisation's rules, imposition of certain unfavourable conditions, or even adoption of wholly unreasonable or arbitrary rules. However, in most instances, the appropriate form of protection would be the possibility for members to bring the matter before the courts; there should generally be no need for a public body to take action on the members' behalf.

72. In supervising the activities of NGOs, the administrative authorities should apply the same assumption as holds good for individuals, namely that, failing proof to the contrary, their activities are lawful. The powers of the administrative authorities and the police, notably as regards

search and seizure, and the penalties that may be imposed, must be consistent with the principle of proportionality and be subject to judicial supervision.

73. The fundamental principles specify that dissolution of an NGO – the ultimate penalty – should be used only a last resort. Such cases should be extremely rare, and it must be shown that there is a very sound basis for taking a measure of this kind. Although the measure may appear warranted, to be valid it must, in turn, also be subject to effective judicial review.

Liability

74. The principles established under this head are themselves a consequence of an NGO's legal personality. The NGO has separate existence from its members and founders, and it alone is liable for debts and obligations entered into on its behalf, save in case of misconduct or neglect of duties by a member of staff or management. In the latter cases, the NGO or others affected should be able to take legal action against the person responsible in order to obtain compensation for the damage caused.

Relations with governmental bodies

75. Competent and responsible NGO input to the process of public policy formulation enhances the applicability of legislation and the seriousness of governmental decision-making.

76. Although NGOs and state authorities sometimes have an ambiguous attitude towards dialogue, it is in the interest of them both to establish mechanisms for dialogue and consultation, as they pursue a common objective of finding solutions to society's problems and satisfying its members' needs. Their participation is distinct from, and does not replace, the role of political parties. Consultation may take place at a national, local or sectoral level and may be particularly useful in the drafting of legislation.

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Abstract

The report "Analysis of the EU15 Non-profit Sector for Monitoring and Control" was written in the context of the European Commission forum "Support against Terrorist Financing" by Directorate General Justice, Liberty and Security (JLS), and of a Joint Research Centre (JRC) research project to support monitoring and control for EU aid funds. The report's purpose is to give an overview of the non-profit sector in EU15 with specific attention to the prevention of fraudulent use of funds in this sector, in general, and terrorist financing in particular. This report is complemented by the report "Analysis of the EU10 Non-profit Sector for Monitoring and Control" which concentrates on the non profit sector in the ten new countries.

Though the "fight against terrorist financing" acquired added political significance in recent times and has monopolised attention, the more general problem of the misuse of funds by the non-profit sector has existed for quite some time - well before the recent terrorist attacks – and needs to be considered as a problem in its own right.

It is a fact that the recent terrorist events helped to bring the non-profit sector into the spotlight demanding stronger action to increase transparency and accountability in this area.

After a short presentation of the project, the report briefly introduces the problem in the international context and gives an overview of various attempts to tackle it by international organisations. A summary of existing terms and their definitions serves the purpose of helping to characterise the sector more usefully. There follows an analysis of EU15 regulations governing the non-profit sector, by looking specifically into the following dimensions: registration, accreditation, and monitoring requirements, taxation and the special case of the gambling sector. The report ends with a set of recommendations for further action.

The mission of the JRC is to provide customer-driven scientific and technical support for the conception, development, implementation and monitoring of EU policies. As a service of the European Commission, the JRC functions as a reference centre of science and technology for the Union. Close to the policy-making process, it serves the common interest of the Member States, while being independent of special interests, whether private or national.